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**IN THE COURT OF APPEALS, DIVISION II  
FOR THE STATE OF WASHINGTON**

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HOOD CANAL SHELLFISH *et al.*,

Petitioners,

v.

DEPARTMENT OF NATURAL RESOURCES,

Respondent.

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FROM THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR MASON COUNTY

**OPENING BRIEF OF PETITIONER VIRGIL TIMMERMAN**

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## INTRODUCTION

This case stems from a dispute regarding the ownership of tidelands in Dewatto Bay, which is located in Mason County. Petitioner, Hood Canal Shellfish Company, sought to quiet title in Mason County Superior Court, and the Washington State Department of Natural Resources (“DNR”) answered and brought third-party claims against neighboring landowners, including Virgil Timmerman (“Mr. Timmerman”), claiming that DNR now owns tidelands it previously sold to private citizens.

At around the age of 11, Mr. Timmerman started spending his summers living and working on the King family property<sup>1</sup>, which is located in Dewatto Bay. CP 743-44. Mr. Timmerman, now 78 years old, owns real property in and around Dewatto Bay and various tracts of tidelands; including, the “Murray Tidelands” and the “Brown Tidelands.” CP 744. For the past several decades, Mr. Timmerman has stewarded, maintained, and improved the Murray Tidelands and the Brown Tidelands, and has seeded and harvested oysters and other shellfish on these properties. CP 744. Despite having owned these tidelands for decades, DNR dragged Mr. Timmerman into this lawsuit by claiming for the first time that a portion of the Murray Tidelands did not belong to Mr. Timmerman, but instead

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<sup>1</sup> One of the King Family properties is the upland property now owned by DNR. *See*, CP 724.

belonged to the State of Washington. CP 745. Before the lawsuit below, Mr. Timmerman had seen no indication or suggestion that any portion of the Murray Tidelands belonged to DNR. CP 749.

DNR's newly-found claim that it owns a portion of the Murray Tidelands shocked Mr. Timmerman. CP 749. This was particularly surprising because in 1966 Mr. Timmerman's predecessors-in-interest sued to quiet title to the Murray Tidelands in Mason County Superior Court (hereinafter "the *Margett Litigation*"), and named the State of Washington as a defendant. CP 755-63. The State appeared through DNR, filed an Answer, and sought to have title to the Murray Tidelands quieted in DNR. CP 765-67. DNR and Mr. Timmerman's predecessor-in-interest entered into a Stipulation and Order of Dismissal with prejudice, whereby title to the Murray Tidelands were quieted in Robert Hemphill, Mr. Timmerman's predecessor-in-interest, who agreed to pay DNR \$1,000.00 in exchange for the same. CP 769-773. DNR accepted this payment from Mr. Hemphill, and the Commissioner of Public Lands entered an Order confirming receipt of this payment, and accepted the same as "payment in full **for any claim** the State of Washington **may have had** in any of the tidelands herein described [the Murray Tidelands]." CP 777 (emphasis supplied).

Nevertheless, and over 50 years later, DNR argued below that it owns a portion of the Murray Tidelands based upon a novel interpretation

and expanded application of the principles announced in the case of *Spath v. Larsen*, 20 Wn.2d 500, 148 P.2d 834 (1944). DNR and Hood Canal Shellfish Company filed cross motions for partial summary judgment below, and the trial court ruled without explanation that *Spath* controls and that the survey prepared by DNR's surveyor ("the McEvelly Survey") accurately depicts the boundaries of the tidelands sold by the State of Washington. CP 1668-69.

Mr. Timmerman respectfully submits that the trial court erred as a matter of law, and improperly granted partial summary judgment to DNR when there were genuine issues of material fact in dispute and by failing to consider evidence in the record and all reasonable inferences in a light most favorable to the nonmoving parties. Accordingly, Mr. Timmerman respectfully requests this honorable Court grant summary judgment for the petitioners, or in the alternative, remand this matter for further proceedings.

#### **I. ASSIGNMENTS OF ERROR**

Mr. Timmerman respectfully assigns error to the Mason County Superior Court's Decision on Motions for Summary Judgment. CP 1663-69; Appendix A. Mr. Timmerman's specific assignments of error include that the trial court erred as a matter of law by granting DNR's motion for partial summary judgment, since:

**A.** DNR's claim of ownership is barred by the doctrine of *res judicata* (claim preclusion).

**B.** DNR waived all of its rights to claim any interest in the Murray Tidelands.

**C.** DNR should be equitably estopped from claiming ownership of a portion of the Murray Tidelands.

**D.** DNR's claim of ownership in the Murray Tidelands and the Reidell Tidelands is barred by the doctrine of laches.

**E.** The trial court further erred as a matter of law by concluding that *Spath v. Larsen* controls this case, since *Spath* is inapposite and has never been interpreted and applied to define DNR's remainder ownership interests in tidelands.

**F.** If *Spath v. Larsen* applies, then the trial court erred by granting DNR's motion for partial summary judgment since there were genuine issues of material fact regarding the McEvelly Survey and its application of the doctrine of proration.

**G.** If *Spath v. Larsen* applies, then the trial court erred by granting DNR's motion for partial summary judgment since the trial court failed to consider the facts and all reasonable inferences in a light most favorable to the nonmoving parties.

Issues pertaining to the foregoing assignments of error include:

1. Did the trial court err by ruling that DNR's claim of ownership is not barred by the doctrine of *res judicata* (claim preclusion), since DNR and Mr. Timmerman's predecessors-in-interest already participated in a lawsuit concerning the lawful ownership of the Murray Tidelands, and which action quieted title to the Murray Tidelands in Mr. Timmerman's predecessor-in-interest?

2. Did the trial court err by ruling that DNR did not waive its rights to claim any portion of the Murray Tidelands in the *Margett Litigation* and by the Commissioner's Order, which accepted payment from Mr. Timmerman's predecessor-in-interest for "any interest" the State "may have had" in the Murray Tidelands?

3. Did the trial court err by ruling that DNR should not be equitably estopped from claiming ownership in any portion of the Murray Tidelands, since the owners of the Murray Tidelands and the Reidell Tidelands have used, benefitted, and maintained the tidelands at issue in this case for decades, and since DNR sold these tidelands and elected not to use metes and bounds legal descriptions to define these tideland tracts?

4. Did the trial court err by ruling that DNR's claims of ownership to the Murray Tidelands and the Reidell Tidelands are not barred

by the doctrine of laches, where ownership of these tidelands has been well-settled for over fifty years?

5. Did the trial court err by ruling that *Spath v. Larsen* controls this case, and that the general equitable principles announced in *Spath* can be used as a new method to determine DNR's remainder ownership interests in tidelands?

6. If *Spath v. Larsen* can be used as a means of determining DNR's remainder interest in tidelands, did the trial court err by adopting the McEvelly Survey even though there were genuine issues of material fact in dispute, since three other professional land surveyors challenged the propriety of the McEvelly Survey?

7. If *Spath v. Larsen* can be applied to determine DNR's remainder ownership interest in tidelands, did the trial court err by not considering the evidence and all reasonable inferences in a light most favorable to the nonmoving parties?

## II. STATEMENT OF FACTS

In 1896, James Murray<sup>2</sup> – the then-owner of all uplands in Government Lot 5 of Section 28 – applied to purchase certain tidelands along these uplands, and on June 12, 1903, the State of Washington sold

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<sup>2</sup> James Murray is one of Petitioner Virgil Timmerman's predecessors-in-interest. CP 690-92.

“all tidelands of the second class, owned by the State of Washington, situated in front of, adjacent to or abutting upon [a] portion of the U.S. Government meander line,” in front of Government Lot 5 in Section 28 to James Murray (hereinafter “the Murray Tidelands”). CP 694; 690-92; 703-05; *See*, Appendix B.<sup>3</sup> Under the laws in effect at the time of this conveyance, the Murray Tidelands extended from the line of ordinary high tide (existing in 1895) to the line of mean low tide. CP 678-79; LAWS OF 1897, ch. 89, § 4.

In 1934, Therese Reidell, owner of certain uplands now adjacent to uplands owned by DNR, first corresponded with the Director of the Department of Public Lands<sup>4</sup> and sought information about the process for purchasing tidelands located in front of her property. CP 156. Since there was an active lease of the tidelands for log booming, Mrs. Reidell was asked to apply to purchase the tidelands in front of her property at the expiration of the log boom lease. CP 181. In 1946, Mrs. Reidell applied to purchase the second class tidelands and vacated oyster reserves “fronting [Reidell’s] uplands” in Government Lot 5. CP 186. In response to a letter from the

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<sup>3</sup> Mr. Timmerman also owns second class tidelands situated immediately to the east of the Murray Tidelands, which were sold by the State of Washington to Ernest Brown in 1958 and which extend from the line of ordinary high water to extreme low tide; but, these tidelands are not in dispute in this proceeding. CP 690-92; 698; 703-05.

<sup>4</sup> The Department of Public Lands is the former iteration of the Department of Natural Resources.

Commissioner of Public Lands Mrs. Reidell sent a hand-drawn map of her upland property and outlined the tidelands and vacated oyster reserves for which she applied to purchase. CP 198-200; Appendix C. The State of Washington then conveyed the second class tidelands and vacated oyster reserves “in front of, adjacent to or abutting upon,” Mrs. Reidell’s upland property, and confirmed that the description in the deed was “intended to convey such tide lands as lie in front of a tract of uplands” owned by Mrs. Reidell in 1946. CP 216.

In 1966, the then-owners of the Murray Tidelands<sup>5</sup> sued to quiet title to the Murray Tidelands in Mason County Superior Court Cause No. 9217 (hereinafter referred to as “the *Margett Litigation*”). CP 755-63; Appendix G. The State of Washington, “acting by and through its Department of Natural Resources,” was a party in the *Margett Litigation*. CP 765-67. DNR filed an Answer in the *Margett Litigation*, and requested that “plaintiff’s claim be dismissed and that the defendant have judgment quieting title to [the Murray Tidelands] in [DNR].” *Id.*; Appendix H. Before a trial, the parties entered into a Stipulation and Order of Dismissal with prejudice. CP 769-73; Appendix I. By Order of the Mason County Superior Court, dated August 11, 1967, it was determined that the State of

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<sup>5</sup> Mr. Timmerman’s predecessors-in-interest.

Washington conveyed certain tidelands to James Murray on June 12, 1903, that the conveyance was valid, and by its definition gave Mr. Murray those tidelands extending from the line of ordinary high water down to mean low tide. *Id.* As part of the Stipulation and Order of Dismissal, Robert Hemphill – Mr. Timmerman’s predecessor-in-interest – paid \$1,000.00 to DNR "and upon payment of said sum, the defendant, State of Washington, shall have no further claim of right to the property described herein." *Id.*

Thereafter, on November 28, 1967, the Commissioner of Public Lands issued an Order “In re: Acceptance of Money under Cause No. 9217 in the Superior Court of the State of Washington for Mason County – Margett et al v. Armour et al – AG File No. 26862. CP 775-777; Appendix J. The Commissioner’s Order legally described the Murray Tidelands,<sup>6</sup> affirmed that the tideland deed from the State of Washington to James Murray was valid, and confirmed:

. . . that the sum of \$1,000.00 has been deposited in this office in accordance with terms and instructions of said Stipulation and Order of Dismissal, and the Commissioner being fully advised, it is therefore ORDERED and DETERMINED that the sum of \$1,000.00 deposited in this office be and the same is hereby accepted as payment in full for any claim the State of Washington may have had in any of the tidelands herein described, that said sum be transferred to the State Treasurer for credit to the proper fund.

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<sup>6</sup> The Commissioner of Public Land’s Order specifically excepted the Brown Tidelands; but, these tidelands are not at issue in this dispute, though they are now also owned by Mr. Timmerman.

CP 777; Appendix J. Sometime following resolution of the *Margett Litigation*, DNR revised its aquatic plates<sup>7</sup> to reflect the private ownership of the Murray Tidelands. CP 2067; Appendix D. The Murray Tidelands are indicated on the aquatic plates with a reference to Note “A,” which states: “State relinquished claim to these tidelands (above mean low) thru Cause No. 9217 in the Superior Court of the State of Washington for Mason County – Margett et al vs Armour et al, A.G. File No. 26862. Ref. Comm. Order 67-1011, Nov. 28, 1967.” CP 2065; Appendix D.

Mr. Timmerman acquired his first ownership interest in the Murray Tidelands in 1977, and since then he has “stewarded, protected, improved, and cared for [his] tideland property.” CP 744. Mr. Timmerman has “invested a tremendous amount of time, energy, and money into the improvements located upon [the Murray and Brown Tidelands].” *Id.* Unbeknownst to Mr. Timmerman, in 1992 the State of Washington engaged R.H. Winters Co., Inc. to prepare a survey of what it believed to be DNR tidelands located on the western side of the headland. CP 1358 – 59; Appendix E.

Then in July of 2015 – almost five decades after Mr. Timmerman first took title to the Murray Tidelands – DNR filed a Third-Party Complaint

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<sup>7</sup> The Aquatic Plates are maintained by DNR, and are sketches of aquatic land transactions throughout Washington State. CP 404.

against Mr. Timmerman (and some of his neighbors) claiming that the lateral boundaries of certain privately-owned tidelands, including the Murray Tidelands, now needed to be prorated. CP 1928.

Petitioner, Hood Canal Shellfish Company, LLC, and Respondent, DNR, filed cross-motions for partial summary judgment. CP 2220. Mr. Timmerman filed a Response in Support of Plaintiffs' Motion for Summary Judgment and in Opposition to DNR's Motion for Summary Judgment. CP 1997-2032. Visiting Judge Houser then heard argument of counsel, considered the record, and granted DNR's Motion for Partial Summary Judgment without explanation or analysis. CP 2220-26; Appendix A. Petitioners Hood Canal Shellfish Company,<sup>8</sup> E.J. Iddings, and Mr. Timmerman appealed the trial court's decision, and this Court accepted review. CP 2219-2226.

### III. ARGUMENT

#### A. Standard of Review

Review of a ruling granting summary judgment is *de novo*. Anderson v. Weslo, Inc., 79 Wn. App. 829, 833, 906 P.2d 336 (1995). Thus, this Court engages in the same inquiry as the trial court, Nivens v. 7-11 Hoagy's Corner, 133 Wn.2d 192, 197-98, 943 P.2d 286 (1997), and will

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<sup>8</sup> Mr. Timmerman adopts and incorporates herein by this reference the Opening Brief filed by Petitioner Hood Canal Shellfish Company.

consider “facts and all reasonable inferences therefrom . . . in the light most favorable to the nonmoving party,” and grant summary judgment “only if, from all the evidence, reasonable persons could reach but one conclusion.” *Scott v. Pac. W. Mountain Resort*, 119 Wn.2d 484, 502, 834 P.2d 6 (1992). Summary judgment proceedings are designed to avoid useless trials, but “a trial is not useless, but is absolutely necessary where there is a genuine issue as to any material fact.” *Kelley v. Tonda*, 198 Wn. App. 303, 310, 393 P.3d 824 (2017). “It seems obvious that in situations where, though evidentiary facts are not in dispute, different inferences may be drawn therefrom as to ultimate facts such as intent, a summary judgment would not be warranted.” *Id.*, at 310-11.

**B. DNR’s Claim of an Ownership Interest in the Murray Tidelands is Barred by the Doctrine of *Res Judicata* (Claim Preclusion).**

The term *res judicata* encompasses both “claim preclusion”<sup>9</sup> (often called *res judicata*) and “issue preclusion” (often called collateral estoppel). *Shoemaker v. Bremerton*, 109 Wn.2d 504, 507, 745 P.2d 858 (1987). Claim preclusion “is a judicially created doctrine designed to prevent relitigation and to curtail multiplicity of actions by parties, participants or privies who have had an opportunity to litigate the same matter in a former action in a

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<sup>9</sup> Claim preclusion applies “to what might, or should, have been litigated as well as to what was actually litigated, if all part of the same claim or cause of action.” Philip A. Trautman, CLAIM AND ISSUE PRECLUSION IN CIVIL LITIGATION IN WASHINGTON, 60 Wash. L. Rev. 805, 814 (1985).

court of competent jurisdiction.” *Karlberg v. Otten*, 167 Wn. App. 522, 535, 280 P.3d 1123 (2012). “Also referred to as claim preclusion or as the prevention of ‘claim splitting,’ *res judicata* prohibits the relitigation of claims and issues that were litigated, **or could have been litigated**, in a prior action.” *Ensley v. Pitcher*, 152 Wn. App. 891, 899, 222 P.3d 99 (2009) (emphasis supplied). “Filing two separate lawsuits based on the same event – claim splitting – is precluded in Washington.” *Id.*, at 898-99. This theory of dismissal is based on the rationale that the relief sought in a subsequent action ‘could have and should have been determined in a prior action.’” *Landry v. Luscher*, 95 Wn. App. 779, 783, 976 P.2d 1274 (1999). Generally “if an action is brought for part of a claim, a judgment obtained in the action precludes the plaintiff from bringing a second action for the residue of the claim.” *Id.*

The doctrine of claim preclusion provides that “a matter may not be relitigated, **or even litigated for the first time, if it could have been raised**, and in the exercise of reasonable diligence should have been raised in the prior proceeding.” *Kelly-Hansen v. Kelly-Hansen*, 87 Wn. App. 320, 329, 941 P.2d 1108 (1997) (emphasis supplied). The Washington State Supreme Court “has also said, on numerous occasions, that *res judicata* applies, except in special cases, not only to points upon which the court was actually required by the parties to form an opinion and pronounce a

judgment, but to every point which properly belonged to the subject of the litigation, and which parties, *exercising reasonable diligence*, might have brought forward at that time.” *Id.*, at 329 (emphasis in original). “This court from early years has dismissed a subsequent action on the basis that the relief sought **could have and should have been determined in a prior action.**” *Id.*, at 329-30 (citing references omitted) (emphasis supplied). “[I]t has been held that a matter should have been raised and decided earlier if it is merely an alternate theory of recovery, or an alternate remedy.” *Id.*, at 331 (compiling Washington Supreme Court cases); *see also*, *Sound Built Homes, Inc. v. Windermere Real Estate/South, Inc.*, 118 Wn. App. 617, 631-32, 72 P.3d 788 (2003) (summarizing the application of res judicata by Washington courts and rejecting the position “that a party can bring as many actions as he or she has substantive legal theories, even if all theories involve the same facts, the same evidence, and the same transaction”). Whether an action is barred by res judicata is a question of law reviewed *de novo*. *Lynn v. Dep’t of Labor & Indus.*, 130 Wn. App. 829, 837, 125 P.3d 202 (2005).

Although there are a variety of tests for determining whether a matter should have been litigated in a prior proceeding there is no simple or all-inclusive test. *Rains v. State*, 100 Wn.2d 660, 663-64, 674 P.2d 165 (1983); *see also*, Philip A. Trautman, CLAIM AND ISSUE PRECLUSION IN

CIVIL LITIGATION IN WASHINGTON, 60 Wash. L. Rev. 805, 815-16 (1985). In general, the court should consider “whether the present and prior proceedings arise out of the same facts, whether they involve substantially the same evidence, and whether the rights and interests established in the first proceeding would be destroyed or impaired by completing the second proceeding.” *Kelly-Hansen*, 87 Wn. App. at 330. Dismissal based upon the doctrine of claim preclusion is proper when a subsequent action is identical to a prior proceeding in four respects: “(i) persons and parties, (ii) causes of action, (iii) subject matter, and (iv) the quality of persons for or against whom the claim is made.” *Pederson v. Potter*, 103 Wn. App. 62, 67, 11 P.3d 833 (2000). All four elements are satisfied in this case, and the trial court erred as a matter of law by not ruling that DNR’s claim of ownership is barred by the doctrine of claim preclusion.

**1. The Parties in Interest in the *Margett Litigation* and This Action are Identical.**

Different parties in separate lawsuits are the same party for the purposes of *res judicata* as long as they are in privity. *Kuhlman v. Thomas*, 78 Wn. App. 115, 121, 897 P.2d 365 (1995) (named defendants in the two proceedings were different, but privity found to exist based upon the nature of the relationships and the claims raised); *see also*, *Woodley v. Myers Capital Corp.*, 67 Wn. App. 328, 337, 835 P.2d 239 (1992). “Privity within

the meaning of the doctrine of res judicata is privity as it exists in relation to the subject matter of the litigation, and the rule is construed strictly to mean parties claiming under the same title. It denotes mutual or successive relationship to the same right or property.” *Owens v. Kuro*, 56 Wn.2d 564, 568, 354 P.2d 696 (1960) (citing references omitted).

Here, DNR sued Mr. Timmerman to claim an ownership interest in the Murray Tidelands. CP 23-36. But, DNR already litigated its claimed ownership in the Murray Tidelands when it participated in the *Margett Litigation*, and DNR was directly adverse to Mr. Timmerman’s predecessors-in-interest. CP 2119-41. Mr. Timmerman and the owners of the Murray Tidelands in the *Margett Litigation* are in privity, and for the purposes of claim preclusion the parties in the *Margett Litigation* and this action are identical.

**2. The Causes of Action in the *Margett Litigation* and This Lawsuit are Identical.**

While there is no specific test for determining identity of causes of action, courts should consider the following criteria: “(1) whether the rights or interests established in the prior judgment would be destroyed or impaired by the prosecution of the second action; (2) whether substantially the same evidence is presented in the two actions; (3) whether the suits involved the infringement of the same right; and, (4) whether the two suits

arise out of the same transactional nucleus of facts.” *Kuhlman*, 78 Wn. App. at 122 (citing *Rains v. State*, 100 Wn.2d 660, 664, 674 P.2d 165 (1983)). These four factors are analytical tools, and it is unnecessary that all four factors be present to bar the claim. *Ensley v. Pitcher*, 152 Wn. App. 891, 903, 222 P.3d 99 (2009) (citing *Kuhlman*, *supra*).

Both the *Margett Litigation* and this lawsuit are quiet title actions concerning whether DNR has any ownership interest in the Murray Tidelands. CP 32; 2130. The *Margett Litigation* established that Mr. Timmerman’s predecessors-in-interest were the lawful owners of the Murray Tidelands, and upon entry of the Stipulation and Order of Dismissal with prejudice, DNR waived and relinquished any claim of ownership interest in the Murray Tidelands. CP 2133-37; Appendix I. The rights and interests established by the Stipulation and Order of Dismissal in the *Margett Litigation* would be destroyed and directly impaired, since DNR is now claiming – and the trial court below wrongly agreed – that DNR owns a part of the Murray Tidelands. CP 2225; Appendix I. This lawsuit and the *Margett Litigation* concern substantially the same evidence, which largely consists of the chain of title for the Murray Tidelands and other related public records, along with the legal descriptions contained therein. The *Margett Litigation* and this lawsuit concern the infringement of the same right: whether DNR has any right, title, or interest in any portion of the

Murray Tidelands. Lastly, this lawsuit and the *Margett Litigation* arise out of the same transactional nucleus of facts, which was to determine the lawful ownership of the Murray Tidelands based upon the legal descriptions and conveyances of those tidelands. DNR has no ownership interest in the Murray Tidelands because over 50 years ago in the *Margett Litigation* the same Superior Court conclusively determined that DNR has no ownership interest in the Murray Tidelands. CP 2133-37. Therefore, the causes of action in this lawsuit and the *Margett Litigation* are identical.

**3. The Subject Matter of the *Margett Litigation* and this Lawsuit Both Concern Whether DNR has an Ownership Interest in the Murray Tidelands.**

The *Margett Litigation* and this lawsuit both concern the lawful ownership of the Murray Tidelands. In the *Margett Litigation*, DNR claimed that the deed for the Murray Tidelands from the State of Washington to James Murray in 1903 was void, and that ownership of the Murray Tidelands was vested in the State of Washington. CP 2129-30; Appendix H. The Court in the *Margett Litigation* determined that the deed for the Murray Tidelands “is valid,” described Mr. Timmerman’s tidelands, and ordered that upon payment of \$1,000.00 to DNR that the “State of Washington, shall have no further claim or right to the property described herein.” CP 2133-37; Appendix I.

Now, over 50 years later, DNR claims – through its purported application of proration as announced in *Spath v. Larsen* – that DNR has an ownership interest in a portion of the Murray Tidelands. CP 4281; Appendix F. The subject matter is therefore identical, and DNR had every opportunity in the *Margett Litigation* to invoke *Spath v. Larsen* and lay claim to the westernmost portion of the Murray Tidelands. *See, id.* This is especially true since *Spath v. Larsen* was decided 22 years before the *Margett Litigation* commenced in 1966. CP 2119. DNR could have – and should have – claimed ownership of a portion of the Murray Tidelands based upon *Spath v. Larsen* in the *Margett Litigation*, since the subject matter of the *Margett Litigation* was whether DNR had an ownership interest in the Murray Tidelands, which is identical to the subject matter at issue in this case.

**4. The Quality of Persons in the *Margett Litigation* and This Action is Identical.**

The fourth factor for considering the application of claim preclusion simply requires a determination of the parties in the second suit that are bound by the judgment in the first suit. *Ensley*, 152 Wn. App. at 905 (referencing, 14A Karl B. Tegland, WASHINGTON PRACTICE: CIVIL PROCEDURE, § 35.27, at 464 (1st ed. 2007) (defining “identity and quality of parties” requirement as “a determination of who is bound by the first

judgment – all parties to the litigation plus all persons in privity with such parties.”). Where parties are claiming under the same title privity exists. See, Stevens County v. Futurewise, 146 Wn. App. 493, 502, 192 P.3d 1 (2008) (review denied).

Here, there is an identical quality of persons. DNR participated in both the *Margett Litigation* and this lawsuit. CP 2129-31. Mr. Timmerman is in direct privity with the plaintiffs in the *Margett Litigation*, since he now holds title to the Murray Tidelands. CP 2119-41. While this fourth factor is satisfied regarding Mr. Timmerman and DNR, arguably the other parties in this case were also in privity with those parties challenging DNR’s claim of ownership to the Murray Tidelands in the *Margett Litigation*.

“In determining whether a party and nonparty were in privity, courts must consider the nature of the relationship between the two parties and the nature of the claims.” Kuhlman, 78 Wn. App. 115 at 121. Privity between a party and a nonparty exists for purposes of claim preclusion if the party adequately represented the nonparty’s interests in the prior proceedings. Stevens County, 146 Wn. App. at 502-03.

If, in the *Margett Litigation*, DNR had claimed an ownership interest in the Murray Tidelands based upon its strained interpretation of *Spath v. Larsen*, then DNR would have necessarily involved the Iddings and the

predecessors-in-interest of the other parties in this case, and each party in this proceeding would have been in privity with those parties.

There is absolutely no reason why DNR could not have named all of the predecessors-in-interest to the parties in this litigation to advance its claim of ownership to a portion of the Murray Tidelands (and most of the Reidell Tidelands) in 1966, when DNR participated in the *Margett Litigation*. The *Margett Litigation* and this lawsuit arise from the same facts, involve substantially the same evidence, and DNR could have relied on the judicial doctrine of proration during the *Margett Litigation*.

The trial court's adoption of the McEvelly Survey destroys and impairs the Stipulation and Order of Dismissal entered decades ago by the same Superior Court in the *Margett Litigation*, which purported to quiet title to the Murray Tidelands in Mr. Timmerman's predecessors-in-interest once and for all. Quite simply, if DNR wanted to claim the tract of tidelands shown by the McEvelly Survey, then it should have done so during the *Margett Litigation*. The trial court erred as a matter of law, and this Court should grant judgment in favor of the petitioners, and dismiss DNR's claim to any portion of the Murray Tidelands and the Reidell Tidelands based upon the doctrine of claim preclusion.

**C. DNR Should Be Estopped From Claiming Any Right, Title, or Interest in the Murray Tidelands.**

Equity demands that DNR be estopped from claiming ownership of any portion of the Murray Tidelands. DNR has already been paid twice for the Murray Tidelands by Mr. Timmerman's predecessors-in-interest. CP 2058; 2141. The Mason County Superior Court has already ordered that DNR shall have "no further claim of right to [the Murray Tidelands]," CP 2137, and DNR already formally waived and relinquished "any claim [it] may have had in any of [the Murray Tidelands]," CP 2141; Appendix J. Yet shockingly, DNR now claims it owns a portion of the Murray Tidelands based upon an equitable judicial doctrine. *See*, CP 4281; Appendix F. The laws of the State of Washington should not be interpreted to promulgate such injustices, and the trial court erred as a matter of law when it granted partial summary judgment to DNR.

**1. DNR Waived All of its Rights to Claim Any Portion of the Murray Tidelands.**

A waiver is the intentional and voluntary relinquishment of a known right, . . . . It may result from an express agreement or be inferred from circumstances indicating an intent to waive. It is a voluntary act which implies a choice, by the party, to dispense with something of value or to forego some advantage. . . . A waiver is unilateral and arises by the intentional relinquishment of a right, or by a neglect to insist upon it . . . Once a party has relinquished a known right or advantage, he cannot reclaim it without the consent of his adversary.

*Bowman v. Webster*, 44 Wn.2d 667, 669-70, 269 P.2d 960 (1954). Waiver is the intentional abandonment or relinquishment of a known right, and

intent to waive must be shown by unequivocal acts or conduct inconsistent with any intention other than to waive a right. *Harmony at Madrona Park Owners v. Madison*, 143 Wn. App. 345, 360, 177 P.3d 755 (2008). Where reasonable minds could reach but one conclusion, whether a waiver has occurred can be determined on summary judgment. *Id.* (citing *Michel v. Melgren*, 70 Wn. App. 373, 379, 853 P.2d 940 (1993)).

Here, DNR was not only a party to the Stipulation and Order of Dismissal entered with prejudice by the Mason County Superior Court in the *Margett* Litigation, CP 2133-37, but DNR also then issued its own Order to confirm acceptance of “payment in full for any claim [DNR] **may have had in any of the tidelands herein described.**” CP 2139-41 (emphasis supplied). Both the Stipulation and Order of Dismissal and the Commissioner’s Order legally described the Murray Tidelands, and confirmed that DNR shall have no further claim of ownership to those tidelands. CP 2133-37; 2139-41. By signing the Stipulation and Order of Dismissal, and by issuing the Commissioner’s Order, DNR voluntarily, knowingly, and intentionally waived and relinquished any further claim to the Murray Tidelands. Nevertheless, DNR argued below that it now owns a portion of the Murray Tidelands, and the trial court erred as a matter of law by granting partial summary judgment for DNR when it decided that

the McEvelly Survey properly depicts the boundaries of the Murray Tidelands. CP 2225.

**2. DNR Should be Equitably Estopped from Claiming Any Ownership of the Murray Tidelands.**

It is wholly inequitable to allow DNR to claim ownership of a portion of the Murray Tidelands, which it first conveyed to James Murray over 115 years ago, and to which DNR waived and relinquished any claim of right in 1967. CP 2133-37; 2139-41. Equitable estoppel is defined as:

the effect of voluntary conduct of a party whereby he is absolutely precluded, both at law and in equity, from asserting rights which might perhaps have otherwise existed, either of property, of contract, or of remedy, as against another person who in good faith relied upon such conduct, and has been led thereby to change his position for the worse, and who on his part acquires some corresponding right either of contract or remedy.

*Strand v. State*, 16 Wn.2d 107, 115, 132 P.2d 1011 (1943)<sup>10</sup>. In *Strand*, the State sold second-class tidelands to Strand as described by lineal chains along the Government meander line. *Id.*, at 108-09. The State claimed an interest to “islands or hummocks” in the described tidelands, *id.*, at 109-110, since the legislature subsequently passed an act that designated a portion of these tidelands as a public hunting ground and instructed that it be posted as such, *id.*, at 114. The trial court quieted title in Strand (not the

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<sup>10</sup> The *Strand* Court further held that the State, acting in its proprietary capacity, can be equitably estopped from claiming an ownership interest in tidelands that it previously sold. *Strand*, 16 Wn.2d at 116-17.

State), and directed the parties to determine the legal description by metes and bounds by mutual agreement, or further proceedings if necessary, and the State appealed. *Id.*, at 110. The Washington State Supreme Court ruled that the State was equitably estopped from claiming any ownership of the tidelands in dispute, and further held that Strand’s title was “entirely the result of the action of the state, in determining the characteristics of the tidelands at the time of the sale.” *Id.*, at 115. The Court wrote that “it is our opinion that the principle of equitable estoppel applies and precludes the state, at this late date [1943], from claiming that its officials made a mistake in 1928 and that the land must revert to the state on that account. *Id.*, at 115.

DNR should be equitably estopped from claiming any portion of the Murray Tidelands, which it first sold to James Murray in 1903. *See*, CP 2058. Mr. Timmerman’s predecessors-in-interest have held title to the Murray Tidelands since 1903, and relying upon the Murray conveyance, they have variously constructed, improved, and otherwise maintained significant structures and improvements along these tidelands during their ownership. *See*, CP 2017. Since 1977, Mr. Timmerman has continued to improve and maintain these tideland structures, stewarding the Murray Tidelands. CP 2017-18. And yet now – more than 115 years after the sale of the Murray Tidelands, and after DNR accepted payment for “for any claim [DNR] may have had” in any of the Murray Tidelands – DNR has

impleaded Mr. Timmerman as a third-party defendant in an attempt to claim title to a portion of the Murray Tidelands. *See*, CP 4281.

DNR argued below that since the deed for the Murray Tidelands did not contain a metes and bounds description that its lateral boundaries are undefined, and that therefore the Murray Tidelands must be “located by proration.” CP 2278. But, this argument is without merit. The State of Washington prepared the deeds that DNR now claims are incapable of being defined based upon the legal descriptions that were used by the State. *See*, CP 3371; 3377; 404 (“It was rare for the state to use metes and bounds descriptions in deeds for second-class tidelands.”). The State of Washington could have conveyed these tidelands using metes and bounds descriptions, but it did not. The Mason County Superior Court quieted title in the Murray Tidelands to Mr. Timmerman’s predecessors-in-interest, and DNR waived and relinquished any claim of right the State may have had to the Murray Tidelands; but now, DNR argues that the tract of tidelands so quieted were indefinable,<sup>11</sup> and must be prorated based upon the holding in *Spath v. Larsen*. But, the legal description for the Murray Tidelands allows for its boundaries to be located, surveyed, and otherwise defined. *See*, Section D.1.(a), below; Appendix B.

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<sup>11</sup> If, as DNR suggests, the legal description of the Murray Tidelands was indefinable, then the *Margett Litigation’s* Stipulation and Order of Dismissal and the Commissioner’s Order were meaningless.

Mr. Timmerman and his predecessors-in-interest have relied on their chain of title, and have owned, occupied, improved, maintained, and cared for the Murray Tidelands since 1903. DNR should not be allowed to now take a portion of the Murray Tidelands claiming that the legal description that DNR drafted is indefinable, and the trial court erred as a matter of law by not deciding that DNR is equitably estopped from claiming any ownership of the same.

**3. The Doctrine of Laches Bars DNR from Claiming Any Portion of the Murray Tidelands.**

Laches is an equitable defense based on estoppel. *Davidson v. State*, 116 Wn.2d 13, 25, 802 P.2d 1374 (1991). Laches will operate to bar a claim if:

- (1) knowledge by plaintiff of facts constituting a cause of action or a reasonable opportunity to discover such facts;
- (2) unreasonable delay by plaintiff in commencing an action;
- and, (3) damage to the defendant resulting from the delay in bringing the action.

*Id.* (internal citation omitted). In *Davidson*, the plaintiffs claimed that actions by the Harbor Line Commission to establish the inner harbor lines arbitrarily and fraudulently disregarded the line of navigability and challenged the procedure by which such inner harbor lines were established.

*Id.* The court reasoned that plaintiffs' claims were barred by the doctrine of laches, since the 1913 statute at issue established the State's power to draw

harbor lines, and the harbor line in question was established in a 1921 plat, and that therefore, plaintiffs' 62-year delay in challenging the harbor lines was barred by the doctrine of laches. *Id.*, at 26.

Here, much like the plaintiffs in *Davidson*, DNR knew, or could have reasonably discovered facts constituting a basis to allow DNR to claim ownership of portions of certain tidelands in Dewatto Bay, since the Supreme Court issued the *Spath v. Larsen* decision in 1944. This is especially true, since DNR could have brought its claims of ownership based on proration during the *Margett Litigation* in 1967.

DNR's significant delay in bringing its claim is unreasonable, and much like in *Davidson*, this delay has caused the unavoidable loss of evidence, since many witnesses who could have been called to testify and opine upon the records and conveyances at issue in this matter are now deceased, and many relevant records and communications have likely been misplaced, lost, or destroyed.<sup>12</sup> *See, id.*, at 26-27. The trial court erred as a matter of law by granting DNR's motion for partial summary judgment, since DNR's claim of ownership to the tidelands are barred by the doctrine of laches.

**D. *Spath v. Larsen* Should Not Be Interpreted as a New Method of Determining DNR's Remainder Ownership Interests in Tidelands, and *Spath* is Inapposite.**

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<sup>12</sup> As one example, Chief Engineer Reed could have testified about the nature of his notations on the Reidell application, and the intent of the conveyance.

If DNR's claims of ownership are not barred by *res judicata*, waiver, equitable estoppel, or laches, which they should be, then the trial court erred by ruling that *Spath v. Larsen* controls this case. The trial court should have engaged in the following inquiry:

- What was the intent of the parties to the tideland conveyances in this case, and is that intent reflected in the deeds?
- Can the boundaries of these conveyances be defined by the instruments themselves?
- Can DNR's remainder ownership interest in Dewatto Bay tidelands be determined using the subtraction method?
- If not, should *Spath v. Larsen* be expanded and applied as a new method to determine DNR's remainder ownership interests in tidelands?
- If so, then how should *Spath v. Larsen* be applied in this case among the affected landowners?

But the trial court failed to engage in such an inquiry. The trial court erred as a matter of law by summarily deciding that *Spath v. Larsen* controls this case, and that the McEvilly Survey "depicts the sales of tidelands" from the State to the parties' predecessors-in-interest. CP 2225; Appendix A.

**1. The State of Washington Sold the Murray Tidelands and the Reidell Tidelands into Private Ownership, and the Intent of the Parties is Confirmed by the Conveyances.**

There is no need to expand the application of *Spath v. Larsen* like the trial court erroneously did below. Quite simply, the intent of the parties, as confirmed by the conveyances for the Murray Tidelands and the Reidell Tidelands, allows for the boundaries of these tideland tracts to be ascertained by the instruments themselves, and by using standard and accepted surveying principles and practices. A brief history is therefore appropriate.

**a. The Murray Tidelands were Sold in 1903, and the Boundaries Can be Ascertained.**

The State's first conveyance of tidelands in Dewatto Bay was to James Murray in 1903. CP 2058. The waterward boundary of the Murray Tidelands extended to the mean low tide under the laws in effect at the time of the grant. LAWS OF 1897, Ch. 89, § 4. The Murray Tidelands deed unambiguously describes a certain distance along the meander line, and it conveyed those tidelands that were "abutting, adjacent to and in front of" said length along the meander. CP 2042-43. The Murray Tideland deed was not associated with an upland tract of land, but instead consisted of calls along the government meander. CP 2058. The lateral boundaries of the Murray Tidelands can be readily ascertained by employing the standard

tools of interpreting and defining legal descriptions for tideland boundaries in 1903: by running a perpendicular line from limiting points on the balanced meander line to the waterward limit, which in the case of the Murray Tidelands extended to mean low water. CP 2042-43; 2075; 2087-88; Appendix B. Since the Murray Tideland deed defines the limits of the call along the meander line, and since these limiting calls occur at angle points along the meander, the perpendicular line to mean low water is established by bisecting the angle point of the balanced meander.<sup>13</sup> *Id.* This same boundary is even reflected on the aquatic plates maintained by DNR, and also appears on the 1992 Winters Survey, which DNR subsequently disavowed. CP 2087-89; 2064-69; 923; Appendices B, D, and E.

The only uncertainty that arises regarding the Murray Tidelands deed is the exact location of the ordinary high water mark in 1903. This would define the landward limits of Mr. Timmerman's ownership. The ordinary high water mark is presently located somewhere beneath what is now known as NE Dewatto Bay Road. CP 2042; 2087-89. Therefore, the Murray Tidelands can readily be surveyed, located, and identified based upon the deed itself.

**b. The State Then Sold Tidelands to Therese Reidell in 1947, Which Can Also be Ascertained.**

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<sup>13</sup> This is exactly what appears on the topographic survey prepared for Mr. Timmerman by John Thalacker, PLS, and Robert Wilson, PLS. CP 2087-88; Appendix B.

The State of Washington sold tidelands immediately to the west of the Murray Tidelands to Therese Reidell in 1947. CP 2105. The Reidell Tidelands deed, unlike the Murray Tidelands deed, described the Reidell Tidelands with reference to Ms. Reidell's upland property at the time of the tideland conveyance. *Id.* While the Reidell Tideland deed may be considered ambiguous, the intent of the parties to that transaction becomes clear when considered in light of relevant extrinsic evidence. Here, the trial court did not consider such evidence in a light most favorable to the non-moving parties.

In Washington State, “deeds are construed to give effect to the intentions of the parties, and particular attention is given to the intent of the grantor when discerning the meaning of the entire document.” Zunino v. Rajewski, 140 Wn. App. 215, 222, 165 P.3d 57 (2007) (overruled on other grounds). In general, courts will “determine the intent of the parties from the language of the deed as a whole.” Zobrist v. Culp, 95 Wn.2d 556, 560, 627 P.2d 1308 (1981). Where the plain language of a deed is unambiguous, extrinsic evidence will not be considered. Sunnyside Valley Irrigation District v. Dickie, 149 Wn.2d 873, 880, 73 P.3d 369 (2003). However, “where ambiguity exists, extrinsic evidence may be considered in ascertaining the intentions of the parties.” *Id.* In such a situation, courts “will consider the circumstances of the transaction and the subsequent

conduct of the parties in determining their intent at the time the deed was executed.” *King County v. Hanson Inv. Co.*, 34 Wn.2d 112, 126, 208 P.2d 113 (1949); *Barlow Point Land Co. v. Keystone Properties I, LLC*, No. 46080-7-II (Wn. Ct. App., Sep. 9, 2015) (extrinsic evidence demonstrated that the parties intended to convey the disputed tidelands).<sup>14</sup> Where there may be doubt as to the parties’ intent, a deed generally will be construed against the grantor. *Ray v. King County*, 120 Wn. App. 564, 587 n. 67, 86 P.3d 183 (2004) (internal citations omitted).

In 1937, Mrs. Reidell applied to purchase those tidelands and vacated oyster reserves abutting that portion of uplands she owned in Government Lot 5 and to the west of the School District’s property. CP 161. Because the vacated oyster reserve located within the western half of Government Lot 5 had already been leased to a timber company, Mrs. Reidell refiled her application to purchase the tidelands and vacated oyster reserves in front of her uplands in 1946. CP 165; 179; 186-88. Importantly, a “Note” written on Mrs. Reidell’s application by Chief Engineer Raymond Reed stated that the Murray Tidelands (referenced as Deed Vol. 4, P. 271 under Application No. 2561) should be “excepted” from Mrs. Reidell’s application to purchase said tidelands and oyster reserves. CP 188.

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<sup>14</sup> *Barlow Point Land Co.* is cited pursuant to GR 14.1.

Mrs. Reidell then submitted an updated application to purchase those tidelands and oyster reserves in front of her upland property and even noted on the application that, “clams and oysters are few and confined to a small rise at some distance from silt-wash.” CP 192-94. The Commissioner of Public Lands wrote in response to Ms. Reidell and asked for her to provide a map of her property. CP 196. In response to the Commissioner’s request, Mrs. Reidell sent a letter on November 18, 1945, which enclosed a hand-drawn map of Mrs. Reidell’s uplands and a sketch of the tidelands and vacated oyster reserves “as applied for.” CP 198-200; Appendix C. The Commissioner responded to Ms. Reidell to thank her for the map and stated that “it is likely that this map will be of considerable assistance to us in processing your application.” CP 202.

These communications culminated in a conveyance that legally described the Reidell Tidelands as follows:

Those portions of the tide lands of the second class and vacated State Oyster Reserve No. 2, Plat No. 137, situate in front of, adjacent to or abutting upon that portion of . . . .

. . . .

The above description is intended to convey such tidelands as lie in front of a tract of uplands owned by Therese D. Reidell on November 15, 1946.

CP 216. 10 years later, Assistant Commissioner Sether (on behalf of Commissioner Case) wrote to the attorneys for the Estate of Therese Reidell to confirm:

Mrs. Therese D. Reidell applied [to] purchase . . . the majority of the second class tidelands and vacated oyster reserve lands in front of the W1/2 of lot 5 . . . . Excluded from Ms. Reidell's purchase were the tidelands conveyed to Mr. James Murray in 1903.

CP 218. The communications between Mrs. Reidell and the State of Washington, including Mrs. Reidell's hand-drawn map, as well as the internal correspondences of the State, and notations made by the Chief Engineer, all clearly demonstrate that the State sold, and Mrs. Reidell purchased, all of those tidelands and vacated oyster reserves lying "in front of, adjacent to or abutting upon" her upland property, save for the Murray Tidelands, which had already been sold to James Murray. Indeed, Ms. Reidell's hand-drawn map clearly shows the area she wished to purchase as extending north of the "headland" to the east, and which area extends beyond the Murray Tidelands. CP 200; Appendix C.

This map alone clarifies that the State of Washington intended to, and did, grant Ms. Reidell those portions of the tidelands lying immediately adjacent to the western lateral boundary of the Murray Tidelands as depicted on the Amended Baseline survey, and on the survey prepared by John Thalacker, PLS, and Robert Wilson, PLS. CP 147-54; 2087-89; Appendix B. Therefore, since the Murray Tidelands and the Reidell Tidelands can be determined based upon the intent of the parties and the conveyances themselves, *see, Barlow Point Land Co., supra*, the trial court erred as a

matter of law by concluding DNR has any ownership interest in the tidelands that would necessitate the invocation of the general equitable principles announced in *Spath*.

**2. DNR’s Remainder Ownership Interests in the Tidelands Can and Should be Determined by the Subtraction Method.**

Under the equal footing doctrine, the State of Washington took title to all tidelands along its shores upon its entry into the union. *Idaho v. Coeur d’Alene Tribe*, 521 U.S. 261, 283, 117 S. Ct. 2028 (1997). Since statehood, and through 1971, the State of Washington has had varying authority to sell its tidelands into private ownership. Those tidelands that the State has not sold into private ownership are held by the State, and the only way to determine the limits or boundaries of these State-owned tidelands – for which there are no deeds – is to “subtract” those tidelands that have been sold. CP 404. Here, the boundaries of the Murray Tidelands and Reidell Tidelands can be established and located based upon the legal descriptions contained in the deeds, *see*, Section D.1, above, and DNR’s remainder ownership can then be determined by this negative accounting. CP 404; 2075-76; 2043.

The parties agree that in order to determine the boundaries of tidelands sold into private ownership by the State of Washington, one employs the “negative accounting method” or the “subtraction method.”

CP 404; 2045; 2075. DNR even maintains a ledger of all tideland transactions that occur on a set of “aquatic plates,” to assist with the tracking of tidelands sold by the State of Washington into private ownership. CP 404-05; Appendix D.

The State presumably still holds title to those tidelands and vacated oyster reserves from mean low water to extreme low water located to the north of the Murray Tidelands. *See*, CP 2087-89. But the subtraction method readily shows that DNR simply doesn’t hold title to any of those tidelands or vacated oyster reserves it previously sold to Ms. Reidell and to James Murray. CP 147-54; 2087-89. The Murray Tidelands deed and the Reidell Tidelands deed can be ascertained from the evidence in the record. DNR’s remainder ownership interest in the Dewatto Bay tidelands can be determined by the subtraction method, and invoking the equitable doctrine of proration announced in *Spath* is simply not appropriate here.

**3. *Spath v. Larsen* is Distinguishable from this Case, and the Trial Court Erred by Expanding the Limited Holding of *Spath*.**

In 1944, and for the first time, the Supreme Court of Washington considered how to resolve a single conflicting boundary line between private upland owners holding paper title to adjacent tidelands located along a concave shoreline. *Spath*, 20 Wn.2d, at 508. One of the *Spath* Court’s main equitable considerations in reaching its decision was premised upon

the right of adjacent upland owners to have “access to open water at the line of low tide.” *Id.*, at 508, 526; *See also, Harris v. Hylebos Industries, Inc.*, 81 Wn.2d 770, 781, 505 P.2d 457 (1973); *Grill v. Meydenbauer Bay Yacht Club*, 61 Wn.2d 432, 436, 378 P.2d 423 (1963). The Court “endeavored to establish certain rules” to serve as a guide, but cautioned “that we have before us for determination a specific problem, and that rules applicable to the situation here presented may not apply in all cases.” *Spath*, 20 Wn.2d at 508. The Court reviewed laws and cases arising in Massachusetts in the 1600s, one of which noted that with regard “to the conflicting claims of coterminous proprietors,” *id.*, at 509, there needed to be a solution “when several proprietors have land bordering upon a cove which is more than a semicircle,” *id.*, “provided always this act of the court shall not be construed to disturb any orderly settlement formerly made,” *id.*, at 510. The *Spath* Court further warned that “due to the endless variety of shore line configurations, no one formula for determining the lateral boundaries of tidelands will be applicable to all cases . . .” *id.*, at 512, and again cautioned that “endless variations of shore lines within this state will present many questions concerning the ownership of tidelands, which cannot be determined by any one fixed rule, however elastic,” *id.*, at 524. Until now, *Spath v. Larsen* has never been used as a means of determining DNR’s remainder ownership interests in tidelands.

This case is distinguishable from *Spath v. Larsen* for many reasons. First, the *Spath* Court was confronted with finding a way to equitably ensure access to navigable water by resolving a single conflicting boundary line of two adjacent upland property owners who held paper title to their upland properties and the associated tidelands. But here, the affected landowners do not all hold paper title to their upland properties and associated tidelands. CP 3365. Not only do the affected owners not all hold paper title to their tidelands, but tideland ownership in this case is also divorced from upland property ownership (for example, the Murray Tidelands stand alone and separate from upland property ownership). CP 3365; 3371. Unlike in this case, the underlying ownership of the tideland properties was not in dispute in *Spath*.

Furthermore, there is no conflict requiring a resolution in this case. Unlike in *Spath*, there is no conflict between the Murray Tidelands and the Reidell Tidelands. If there could be a conflict between these deeds, it is swiftly resolved by the junior-senior rights analysis. The junior-senior rights analysis is a means by which to determine what property was sold to whom based upon the ownership of the affected properties at the time of the respective grants. CP 2075-76. Since the deed for the Murray Tidelands was the first grant of tidelands in Dewatto Bay, the lateral boundaries of these tidelands ran from certain points called along the meander from the

ordinary high water mark to the mean low water mark at bisected angle points along the meander. CP 2075; 2043. Decades later, the State sold Mrs. Reidell her tidelands, which extended out beyond the Murray Tidelands. CP 147-54; 2078. Since the State sold the Murray Tidelands to Mr. Murray in 1903 and the Reidell Tidelands to Mrs. Reidell in 1947 there is no conflict, because the Murray Tidelands deed was senior to the Reidell Tidelands deed.

Moreover, one of main equitable considerations supporting the Court's decision in *Spath* was the right of adjacent upland owners to have "access to open water at the line of low tide." *Spath*, at 508, 526. But here, and unlike in *Spath*, this is not a dispute between adjacent upland owners who hold paper title to tidelands and who would otherwise be denied access to navigable water because of intersecting lateral tideland boundaries extended per the standard and accustomed practice. This case has nothing to do with access to navigable water. But even if it did, DNR already has adequate access to navigable water from its tidelands on the eastern side of the headland, and from various points throughout western Washington state. Therefore, the main equitable considerations underlying the *Spath* Court's decision are not present here. The facts of this case are markedly distinct from those in *Spath*, and the trial court erred by concluding that *Spath* controls.

DNR argued, and the trial court erroneously agreed, that the Court's decision in *Spath* permeates all tideland deeds throughout Washington State. CP 2225; RP 196-98. If this is true, black letter real property law would be upset – if not eviscerated – by the trial court's decision. If the trial court's decision were affirmed by this Court, then it would potentially undermine every tideland deed ever granted to a private citizen adjacent to State-owned uplands. It would create a brand new vehicle for DNR to claim that its ownership interests in tidelands are *not* determined by the deeds themselves, but instead by the doctrine of proration announced in *Spath*. The trial court's decision means that the general equitable principles announced in *Spath* can now be used as a proxy for the subtraction method. But, *Spath v. Larsen* was not a case that ever considered the most appropriate method to determine the State's remainder ownership interests in tidelands. This is a novel and wide-ranging interpretation of the equitable principles announced in *Spath*, and this Court should not affirm the trial court's unnecessary expansion of the doctrine of proration.

But, if this Court decides that *Spath* can apply in this case, then the trial court erred by adopting the McEvelly Survey as depicting “the boundaries of the sales of tidelands” to the parties in this case, since there were genuine issues of material fact in dispute, and since the trial court erred

by failing to consider all of the evidence and reasonable inferences in a light most favorable to the nonmoving parties.

**E. In the Alternative, if *Spath v. Larsen* Applies in This Case, Genuine Issues of Material Fact Preclude Summary Judgment, and the Trial Court Erred by Failing to Consider All Reasonable Inferences in a Light Most Favorable to the Nonmoving Parties.**

If the proration doctrine announced in *Spath v. Larsen* can apply in this case, which it should not, and if proration is the proper method to determine the tideland boundaries, which it is not, then the trial court erred by granting DNR's motion for partial summary judgment and adopting the McEvelly Survey as properly defining the tideland boundaries, since there were genuine issues of material fact in dispute, and since the trial court failed to consider all reasonable inferences in a light most favorable to the nonmoving parties.

**1. The McEvelly Survey is Fatally Flawed, and There Were Genuine Issues of Material Fact that Cannot Be Resolved on Summary Judgment.**

The McEvelly Survey is unreliable, fatally flawed, and contained a variety of significant errors that were ignored by the trial court, and which were rebutted by other competent expert witnesses. CP 2073-82; 2034-47. Each disputed point was a genuine issue of material fact, and it was error for the trial court to grant DNR's motion for partial summary judgment and to adopt the McEvelly Survey as controlling.

Summary judgment is appropriate only if, in view of all the evidence, reasonable persons could reach only one conclusion. Hansen v. Friend, 118 Wn.2d 476, 485, 824 P.2d 483 (1992). Where a decision requires weighing the evidence, balancing competing experts' credibility, and resolution of conflicting material facts, a trial is necessary to resolve such matters. Larson v. Nelson, 118 Wn. App. 797, 810, n.10, 77 P.3d 671 (2003) (dispute among experts, including a surveyor, about whether a slough is a river was improperly resolved on summary judgment and reversed and remanded for trial).

First, the McEvelly Survey relied upon a meander corner that was determined to be "lost" pursuant to the Manual of Instructions for the Survey of the Public Lands of the United States. CP 2039-40. The re-established meander corner is actually 21-feet to the south of the iron pipe that the McEvelly Survey erroneously relied upon. *Id.* The re-established and proper meander corner alters the position of the meander line of Section 28, which consequently alters the location for the point of beginning of the location of the second class tidelands owned by Mr. Timmerman (the Murray Tidelands). *Id.* This was a genuine issue of material fact disputed by the expert surveyors.

Second, the McEvelly Survey was based upon an erroneous interior section subdivision of Section 28. CP 2040-41. The McEvelly Survey

relied upon a decision entered in Mason County Superior Court Cause No. 124900, for the establishment of the north – south centerline of Section 28. *Id.* However, that lawsuit only concerned the boundary common to Government Lots 6 and 7 of Section 28 – and it did not describe or concern the eastern boundary of Government Lot 6. *Id.* In contradiction to the McEville Survey, the Thalacker / Wilson Survey established the section centerline in accordance with the Manual of Instructions for the Survey of the Public Lands of the United States, and by running the centerline parallel with the mean bearing of the existing east boundary of Section 28. *Id.*; Appendix B (rejecting the McEville Survey’s approach). This raised a genuine issue of material fact that was in dispute.

Third, the McEville Survey showed the upland property boundary common to Mr. Timmerman and DNR as marked by “axles” and not iron pipes, but there are no “axles” and these are iron pipes. CP 2042. This raised a genuine issue of material fact in dispute, and goes directly to the credibility of DNR’s expert witness, which must be resolved by a jury at a trial.

And if proration even could be applied in this case, which it should not, then the McEville Survey does not “equitably apportion” tidelands in accordance with the “Cove Rule” or the “Headland Rule.” CP 2045-47; 2079-82. “Coves” and “headlands” are defined by naturally occurring

geologic features of the shoreline. *Id.* “Coves” are defined as naturally occurring geologic features that create a concave bend in the shoreline and produce more than a semicircle. *Id.*; *see also*, *Spath*, 20 Wn.2d at 509. The McEvelly Survey attempted to apply the “Cove Rule” to what is really a substantially straight shoreline and one part of a “headland.” CP 2079-80. The McEvelly Survey does not rely upon any natural features of the shoreline to establish the “cove limits,” and it does not appear to contain any similar methodology for establishing such limits as occurred in *Spath*. CP 2046. The application of the “Cove Rule” to a substantially straight shoreline is not an appropriate application of the rule. *Id.* Moreover, there was no basis for Mr. McEvelly to apply the Cove Rule to only part of a “headland,” and by which he unfairly prorated just a portion of the Murray Tidelands. *Id.*; CP 2079-80. The McEvelly Survey only prorates a portion of the entire Murray Tidelands, but there is no basis in *Spath* or otherwise to prorate only a portion of a whole tideland tract. CP 2080; Appendix F. These were genuine issues of material fact in dispute.

The McEvelly Survey purports to equitably apportion certain tidelands along the presently-existing line of ordinary high water, but this too is erroneous. CP 2081. The proper line of ordinary high tide, at least for the Murray Tidelands, would be upland of its current location and

somewhere beneath the existing fill of the County Road. CP 2042. This was also genuine issue of material fact in dispute.

Finally, the McEvelly Survey only uses one apportionment table for all of the properties involved in DNR's allegedly "equitable apportionment," but this is improper since not all of the affected tideland properties extend to extreme low water. CP 2047. To equitably prorate the tidelands at issue in this case, each of the tideland tracts need to be prorated based upon their conveyances, which required more than just one apportionment table. *Id.* The apportionment table used by the McEvelly Survey disregards the fact that the Murray Tidelands only extend to mean low water, and this genuine issue of material fact was disputed below.

There were genuine issues of material fact in dispute about the methods and practices employed by the McEvelly Survey, and whether it properly prorated the tidelands in this case. The trial court erred by adopting the McEvelly Survey as binding despite the competent and conflicting expert testimony offered by the nonmoving parties below.

**2. The Trial Court Did Not Consider Reasonable Inferences in a Light Most Favorable to the Nonmoving Parties.**

The trial court erred by discounting the expert affidavits offered by the nonmoving parties, and did not consider them or any of the reasonable inferences drawn therefrom in a light most favorable to the nonmoving

parties. On a motion for summary judgment, all facts and reasonable inferences are considered in the light most favorable to the nonmoving party, and summary judgment is only proper if reasonable minds can reach but one conclusion. *Larson*, 118 Wn. App. at 804.

John Thalacker, Robert Wilson, and Terrell Ferguson, three professional land surveyors, all testified and opined that the McEville Survey was fatally flawed, and that it did not properly apportion the tidelands. *See*, Section E.1, above. The trial court erroneously resolved all of these conflicts and the reasonable inferences that can be drawn therefrom in favor of DNR, which was the moving party. As described further above, the nonmoving parties sufficiently challenged the propriety of the McEville Survey and the standards and practices it employed, and the trial court erred by rejecting this evidence and by not considering it in a light most favorable to the nonmoving parties. Reasonable minds could have concluded that the McEville Survey was flawed, and the trial court erroneously weighed the evidence, balanced competing experts' credibility, and resolved conflicting material facts in favor of DNR, and all without a trial.

#### **IV. CONCLUSION**

Mr. Timmerman has been needlessly dragged into a litigation to resolve a dispute that was already litigated over 50 years ago. If DNR wanted to argue that the boundaries of the Murray Tidelands should be

prorated according to *Spath v. Larsen*, then it should have done so during the *Margett Litigation*. Instead, the Mason County Superior Court ordered that upon payment to DNR for the Murray Tidelands the State would have “no further claim or right” to the Murray Tidelands. The Commissioner’s Order issued as a result of the *Margett Litigation* echoed the court order, and DNR accepted payment in full “for any claim the State of Washington may have had” in the Murray Tidelands. DNR’s claim to any portion of the Murray Tidelands is therefore barred by the doctrines of *res judicata* and waiver, and the trial court erred as a matter of law.

Furthermore, the parties to this action have held title to their respective tidelands, and have stewarded, improved, and enjoyed them for decades. The State of Washington elected to describe the tidelands that it sold based on linear calls, and not metes and bounds. Moreover, DNR waited decades to bring its claim based on proration, and evidence and testimony has been lost or destroyed because of this delay. Therefore, DNR should be equitably estopped from claiming an interest in the Reidell Tidelands or the Murray Tidelands, or DNR’s claim should be barred by the doctrine of laches, and the trial court erred as a matter of law.

This case does not require the novel and expanded application of *Spath v. Larsen*. DNR’s remainder ownership interest in Dewatto Bay tidelands can be readily defined based upon the intent of the parties and the

deeds that conveyed tidelands to James Murray and Mrs. Reidell. Since the deeds themselves define the bounds of ownership and since there is no conflict requiring a resolution, it is unnecessary to apply *Spath* in this case, and the trial court erred by doing so as a matter of law.

And, in the alternative, if this Court decides that the general equitable principles announced in *Spath v. Larsen* should determine DNR's remainder ownership interests in this case, then this case should be remanded for trial since there were genuine issues of material fact in dispute regarding the McEvelly Survey, and since the trial court failed to consider the facts and all reasonable inferences in a light most favorable to the nonmoving parties.

For all of the foregoing reasons, Mr. Timmerman respectfully requests that this honorable Court enter judgment for the petitioners, or in the alternative, remand this case for trial.

DATED this 7th day of May 2020.

RESPECTFULLY SUBMITTED:

The Law Office of James P. Grifo, LLC



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James P. Grifo, WSBA No. 45192  
Attorney for Petitioner Virgil Timmerman

# APPENDIX A

REC'D & FILED  
MASON CO. WA:

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SHARON K. FOGO CO. CLERK

BY: BP 7 DEPUTY

15-2-00267-1  
ORGSJ 297  
Order Granting Summary Judgment  
5552163



**SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR MASON COUNTY**

HOOD CANAL SHELLFISH COMPANY,  
LLC, *et al.*

Plaintiffs,

v.

STATE OF WASHINGTON,  
DEPARTMENT OF NATURAL  
RESOURCES,

Defendant/Third Party Plaintiff,

and

BK LOVELY, LLC, a Washington limited  
liability company; *et al.*,

Third Party Defendants.

No. 15-2-00267-1

DECISION ON MOTIONS FOR  
SUMMARY JUDGMENT

THIS MATTER comes before the Court on the Plaintiff's Motion for Partial Summary Judgment, Department of Natural Resources' Motion for Summary Judgment, and Third-Party Defendants DeNotta's<sup>1</sup> Motion for Summary Judgment. The Court

<sup>1</sup> Caron DeNotta and her company, D.D. DeNotta, LLC are collectively designated "DeNotta" in the motion for summary judgment and the court will utilize this designation in this decision.

DECISION ON MOTIONS FOR  
SUMMARY JUDGMENT

1

**JUDGE WILLIAM C. HOUSER**  
Mason County Superior Court  
419 N 4th Street  
Shelton, WA 98584  
(360) 427-9670 extension 348

297

1 reviewed the following documents in consideration of the case:

- 2 1. Plaintiffs' Motion for Partial Summary Judgment;
- 3 2. Declaration of Earl James Iddings in Support of Plaintiffs' Motion for Partial
- 4 Summary Judgment (and attached exhibits)
- 5 3. Declaration of Marlene Iddings in Support of Plaintiffs' Motion for Partial
- 6 Summary Judgment;
- 7 4. Declaration of Robert M. Smith in Support of Plaintiffs' Motion for Partial
- 8 Summary Judgment (and attached exhibits);
- 9 5. Department of Natural Resources' Motion for Partial Summary Judgment and
- 10 Memorandum in Support;
- 11 6. Declaration of Jennifer Morey in Support of DNR's Motion for Partial
- 12 Summary Judgment (and attached exhibits);
- 13 7. Declaration of Kristin Swenddal in Support of DNR's Motion for Partial
- 14 Summary Judgment;
- 15 8. Declaration of Michael McEvilly, PLS, in Support of DNR's Motion for Partial
- 16 Summary Judgment (and attached exhibits);
- 17 9. Declaration of Jerry R. Broadus in Support of DNR's Motion for Partial
- 18 Summary Judgment (and attached exhibits);
- 19 10. Declaration of Steven B. Ivey in Support of DNR's Motion for Partial Summary
- 20 Judgment;
- 21 11. Declaration of Randy Butler in Support of DNR's Motion for Partial Summary
- 22 Judgment;
- 23 12. Declaration of Oliver "Skip" Duncan in Support of DNR's Motion for Partial
- 24 Summary Judgment;
- 25 13. Declaration of Ted Jackson in Support of DNR's Motion for Partial Summary
- 26 Judgment;
- 27 14. Defendants Caron DeNotta and D.D. DeNotta LLC's Motion for Summary
- 28 Judgment;
- 29 15. Declaration of R. Scott Fallon in Support of Defendants' DeNotta's Motion for
- 30 Summary Judgment (and attached exhibits);

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- 16. Department of Natural Resources' Response to Plaintiffs' Motion for Partial Summary Judgment;
- 17. Declaration of Kristin Swenddal in Support of DNR's Responses to Plaintiffs' and DeNotta's Motions for Summary Judgment (and attached exhibits);
- 18. Declaration of Melinda McKinley in Support of DNR's Response to Plaintiffs' Motion for Partial Summary Judgment (and attached exhibits);
- 19. Declaration of Michael McEvilly, PLS, in Support of DNR's Response to Plaintiffs' Motion for Partial Summary Judgment (and attached exhibits);
- 20. Declaration of Joseph V. Panesko in Support of DNR's Response to Plaintiffs' Motion for Partial Summary Judgment (and attached exhibits);
- 21. Declaration of Camille Speck in Support of DNR's Response to Plaintiffs' Motion for Partial Summary Judgment (and attached exhibits);
- 22. Declaration of Brady Blake in Support of DNR's Response to Plaintiffs' Motion for Partial Summary Judgment (and attached exhibits);
- 23. Declaration of Matthew Jewett in Support of DNR's Response to Plaintiffs' Motion for Partial Summary Judgment (and attached exhibits);
- 24. Department of Natural Resources Response to DeNotta's Motion for Summary Judgment
- 25. Declaration of Jennifer Morey in Support of DNR's Response to DeNotta's Motion for Summary Judgment (and attached exhibits);
- 26. Declaration of Kristin Swenddal in Support of DNR's Response to DeNotta's Motion for Summary Judgment;
- 27. Plaintiffs' and Third-Party Defendant Earl J. Iddings' and Laure Iddings' Response in Support of Defendants Caron DeNotta and D.D. DeNotta LLC's Motion for Summary Judgment;
- 28. Declaration of Robert M. Smith in Support of Plaintiffs' and Third Party Defendant Earl J. Iddings' and Laure Iddings' Response in Support of Defendants Caron DeNotta and D.D. DeNotta LLC's Motion for Summary Judgment (and attached exhibits);
- 29. Declaration of Earl James Iddings in Support of Plaintiffs' and Third Party

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- Defendant Earl J. Iddings’ and Laure Iddings’ Response in Support of Defendants Caron DeNotta and D.D. DeNotta LLC’s Motion for Summary Judgment (and attached exhibits);
30. Plaintiff’s Response to Department of Natural Resources’ Motion for Partial Summary Judgment
31. Declaration of Robert M. Smith in Support of Plaintiffs’ Response to DNR’s Motion for Partial Summary Judgment;
32. Declaration of Marlene Iddings in Support of Plaintiffs’ Response to DNR’s Motion for Partial Summary Judgment;
33. Declaration of Renee Hanover in Support of Plaintiffs’ Response to DNR’s Motion for Partial Summary Judgment;
34. Declaration of Mark McLean in Support of Plaintiffs’ Response to DNR’s Motion for Partial Summary Judgment;
35. Declaration of Terrell Ferguson in Support of Plaintiffs’ Response to DNR’s Motion for Partial Summary Judgment (and attached exhibits);
36. Third Party Defendant Earl James “EJ” Iddings’ Response to DNR’s Motion for Partial Summary Judgment;
37. Declaration of Brad Carey in Support of Response to DNR’s Motion for Partial Summary Judgment;
38. Declaration of Jose Vera in support of Response to Motion for Partial Summary Judgment (and attached exhibits);
39. Declaration of Michael D. Daudt in Support of Response to DNR’s Motion for Partial Summary Judgment (and attached exhibits);
40. Declaration of Kell Rowen in Support of Response to DNR’s Motion for Partial Summary Judgment (and attached exhibits);
41. Declaration of Earl James “EJ” Iddings in Support of Response to DNR’s Motion for Partial Summary Judgment (and attached exhibits);
42. Defendants Caron DeNotta and D.D. DeNotta, LLC’s Response to DNR’s Motion for Partial Summary Judgment;
43. Timmerman’s Response in Support to Hood Canal Shellfish Company’s and

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- DeNotta's Motions for Partial Summary Judgment and in opposition to the Department of Natural Resources' Motion for Partial Summary Judgment;
- 44. Declaration of Robert J. Wilson, PLS (and attached exhibits);
  - 45. Declaration of John L. Thalacker, PLS (and attached exhibits);
  - 46. Declaration of James P. Grifo (and attached exhibits);
  - 47. Declaration of Virgil G. Timmerman;
  - 48. Plaintiffs' Reply to Department of Natural Resources' Response Brief;
  - 49. Declaration of Earl James Iddings in Support of Plaintiffs' Reply to DNR's Response Brief (and attached exhibits);
  - 50. Declaration of Jose Vera in Support of Plaintiffs' Reply to DNR's Response (and attached exhibit);
  - 51. Declaration of Phil Elder in Support of Plaintiffs' Reply to DNR's Response;
  - 52. Declaration of Robert M. Smith in Support of Plaintiffs' Reply to DNR's Response (and attached exhibits);
  - 53. Third Party Defendant Earl James "EJ Iddings Reply RE: Motion for Partial Summary Judgment;
  - 54. Declaration of Brad Carey in Support of Reply RE: Motion for Partial Summary Judgment;
  - 55. Declaration of Jose F. Vera in Support of Reply RE: Motion for Partial Summary Judgment (and attached exhibits);
  - 56. Department of Natural Resources' Reply in Support of DNR's Motion for Partial Summary Judgment;
  - 57. Declaration of Perry Lund in Support of DNR's Motion for Partial Summary Judgment;
  - 58. Declaration of Joseph V. Panesko in Support of DNR's Reply (and attached exhibits);
  - 59. Declaration of Michael McEvilly, PLS in Support of DNR's Reply (and attached exhibit);
  - 60. [Third-Party] Defendants' [DeNotta] Reply to Motion for Summary Judgment;
- and

1 61. Declaration of R. Scott Fallon in Support of [Third-Party]

2 Defendants' [DeNotta] Reply to Motion for Summary Judgment (and attached  
3 exhibits).

4 62. Department of Natural Resources' Statement of Supplemental Authority.

5 63. Plaintiffs' Response to DNR's Statement of Supplemental Authority.

6 The Court further having considered the above listed material and argument of  
7 counsel, the record and files herein; and having been fully advised in the premises,

8 THEREFORE IT IS HEREBY ORDERED:

9 *Spath v. Larsen*, 20 Wn.2d 500, 148 P.2d 834 (1944) established the legal standards  
10 to determine the lateral boundaries of tidelands owned by adjacent owners in a cove and is  
11 the controlling case law for the adjudication of this case; THEREFORE

12 1. Concerning Defendant DNR's Motion for Partial Summary Judgment:

13 a. Whether the State holds superior title to the tidelands that comprise the  
14 Public Beach. In the light most favorable to the moving party, there is no  
15 question of material fact on this issue, therefore, the motion is GRANTED;  
16 and

17 b. Whether the survey attached as exhibit B to the declaration of Michael  
18 McEvelly PLS, depicts the boundaries of the sales of tidelands from the state  
19 to Reidell, Robinson, Hansen and Murray in West Dewatto Bay. In the light  
20 most favorable to the non-moving party, there is no question of material fact  
21 on this issue, therefore, the motion is GRANTED; and

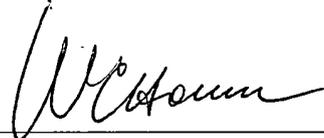
22 c. Whether the survey attached as exhibit B to the declaration of Michael  
23 McEvelly, PLS, accurately establishes the upland boundary between the  
24 school property (TPN 32328-42-60000) and the L. Iddings property (TPN  
25 32328-42-00040). In the light most favorable to the non-moving party,  
26 there is no question of material fact on this issue, therefore, the motion is  
27 GRANTED.; and therefore

28 2. Plaintiff's motion for summary judgment is DENIED.; and therefore

29 3. Third-Party Defendants DeNotta's Motion for Summary Judgment dismissing the  
30

1 third-party complaint that has been filed against them by the State of Washington is  
2 DENIED.

3 Dated this 6<sup>th</sup> Day of May 2019.

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6 \_\_\_\_\_  
7 William C. Houser  
8 *Visiting Superior Court Judge*  
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15-2-00267-1  
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Notice  
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**SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR MASON COUNTY**

HOOD CANAL SHELLFISH COMPANY,  
LLC, *et al.*

No. 15-2-00267-1

Plaintiffs,

NOTICE OF SCRIVENER'S ERROR  
AND  
ORDER NUNC PRO TUNC

v.

STATE OF WASHINGTON,  
DEPARTMENT OF NATURAL  
RESOURCES,

Defendant/Third Party Plaintiff,

and

BK LOVELY, LLC, a Washington limited  
liability company; *et al.*,

Third Party Defendants.

The Court has become aware of a scrivener's error in its Decision on Motions for Summary Judgment filed on May 8, 2019. The Order on page 6 of the Decision, paragraph 1.a. reads: "In the light most favorable to the moving party ...". The language should read "In the light most favorable to the non-moving party...".

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This Order now amends aforementioned language, hereby entering these items *nunc pro tunc*.

NOTICE OF SCRIVENER'S ERROR  
AND AMENDED ORDER

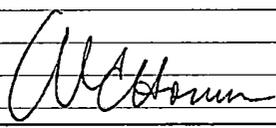
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JUDGE WILLIAM C. HOUSER  
Mason County Superior Court  
419 4<sup>th</sup> Street  
Shelton, WA 98584  
(360) 427-9670 Ext. 348

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It is so ORDERED that the Decision on Motions for Summary Judgment be entered to reflect the original intended date of filing of May 8, 2019 to include the substituted language above.

Dated this 5<sup>th</sup> Day of June, 2019.



William C. Houser  
*Visiting Judge*

NOTICE OF SCRIVERNER'S ERROR  
AND AMENDED ORDER

**JUDGE WILLIAM C. HOUSER**  
Mason County Superior Court  
419 4<sup>th</sup> Street  
Shelton, WA 98584  
(360) 427-9670 Ext. 348

# APPENDIX B

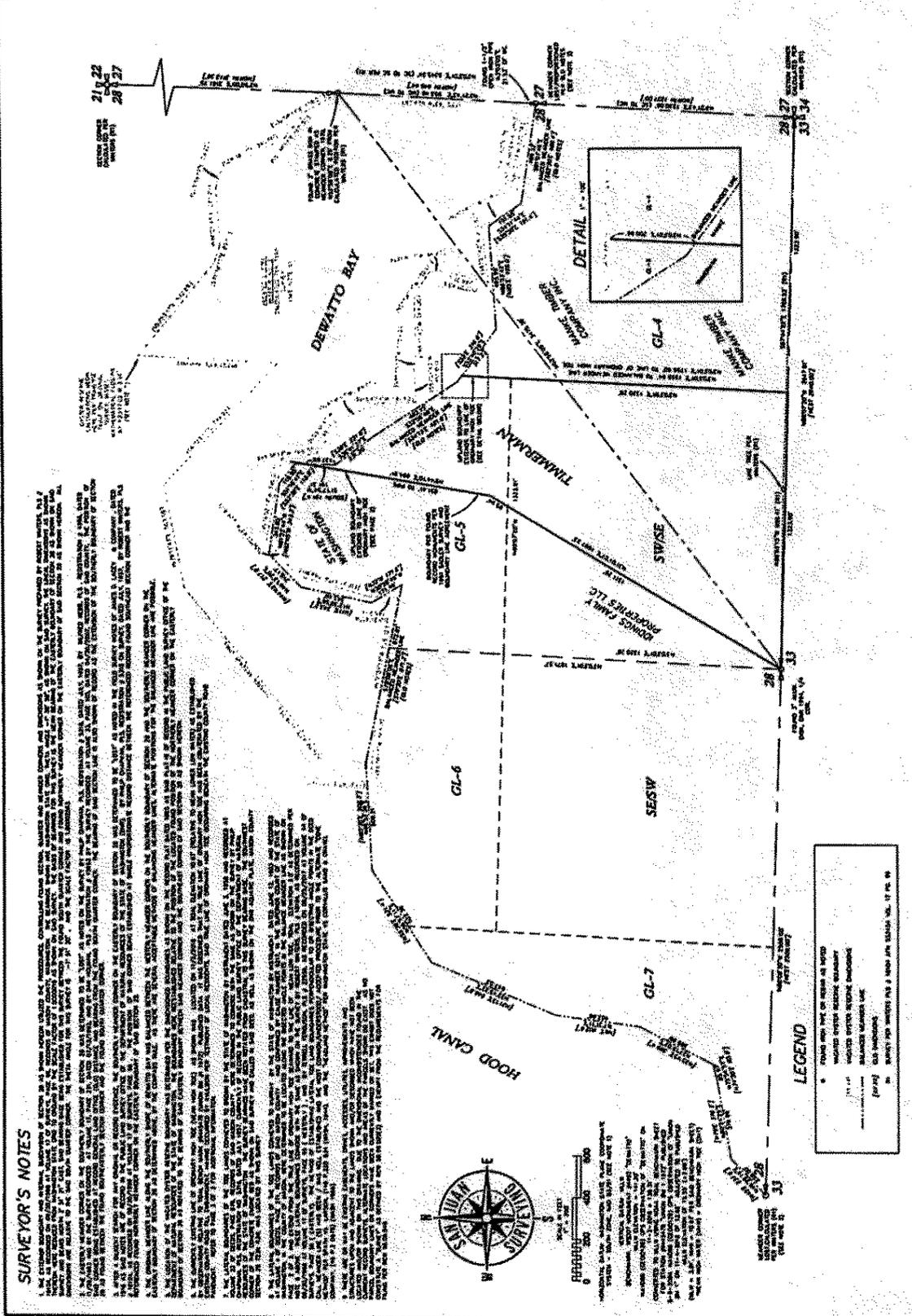
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 MASON COUNTY

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 SECTION 28  
 TOWNSHIP 3  
 RANGE 23

PROPERTY INFORMATION  
 THE PROPERTY IS BEING SURVEYED FOR THE PURPOSES OF THE STATE OF ALASKA  
 THE PROPERTY IS BEING SURVEYED FOR THE PURPOSES OF THE STATE OF ALASKA



SECTION 28  
 TOWNSHIP 3  
 RANGE 23  
 ANCHORAGE AK 985172806



**SURVEYOR'S NOTES**

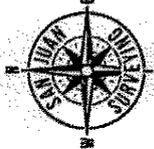
1. The boundary between sections 28 and 29 is shown by a line of iron pins and monuments as shown on the survey map. The boundary between sections 28 and 29 is shown by a line of iron pins and monuments as shown on the survey map. The boundary between sections 28 and 29 is shown by a line of iron pins and monuments as shown on the survey map.

2. The boundary between sections 28 and 29 is shown by a line of iron pins and monuments as shown on the survey map. The boundary between sections 28 and 29 is shown by a line of iron pins and monuments as shown on the survey map. The boundary between sections 28 and 29 is shown by a line of iron pins and monuments as shown on the survey map.

3. The boundary between sections 28 and 29 is shown by a line of iron pins and monuments as shown on the survey map. The boundary between sections 28 and 29 is shown by a line of iron pins and monuments as shown on the survey map. The boundary between sections 28 and 29 is shown by a line of iron pins and monuments as shown on the survey map.

4. The boundary between sections 28 and 29 is shown by a line of iron pins and monuments as shown on the survey map. The boundary between sections 28 and 29 is shown by a line of iron pins and monuments as shown on the survey map. The boundary between sections 28 and 29 is shown by a line of iron pins and monuments as shown on the survey map.

5. The boundary between sections 28 and 29 is shown by a line of iron pins and monuments as shown on the survey map. The boundary between sections 28 and 29 is shown by a line of iron pins and monuments as shown on the survey map. The boundary between sections 28 and 29 is shown by a line of iron pins and monuments as shown on the survey map.



0 100 200 300  
 FEET

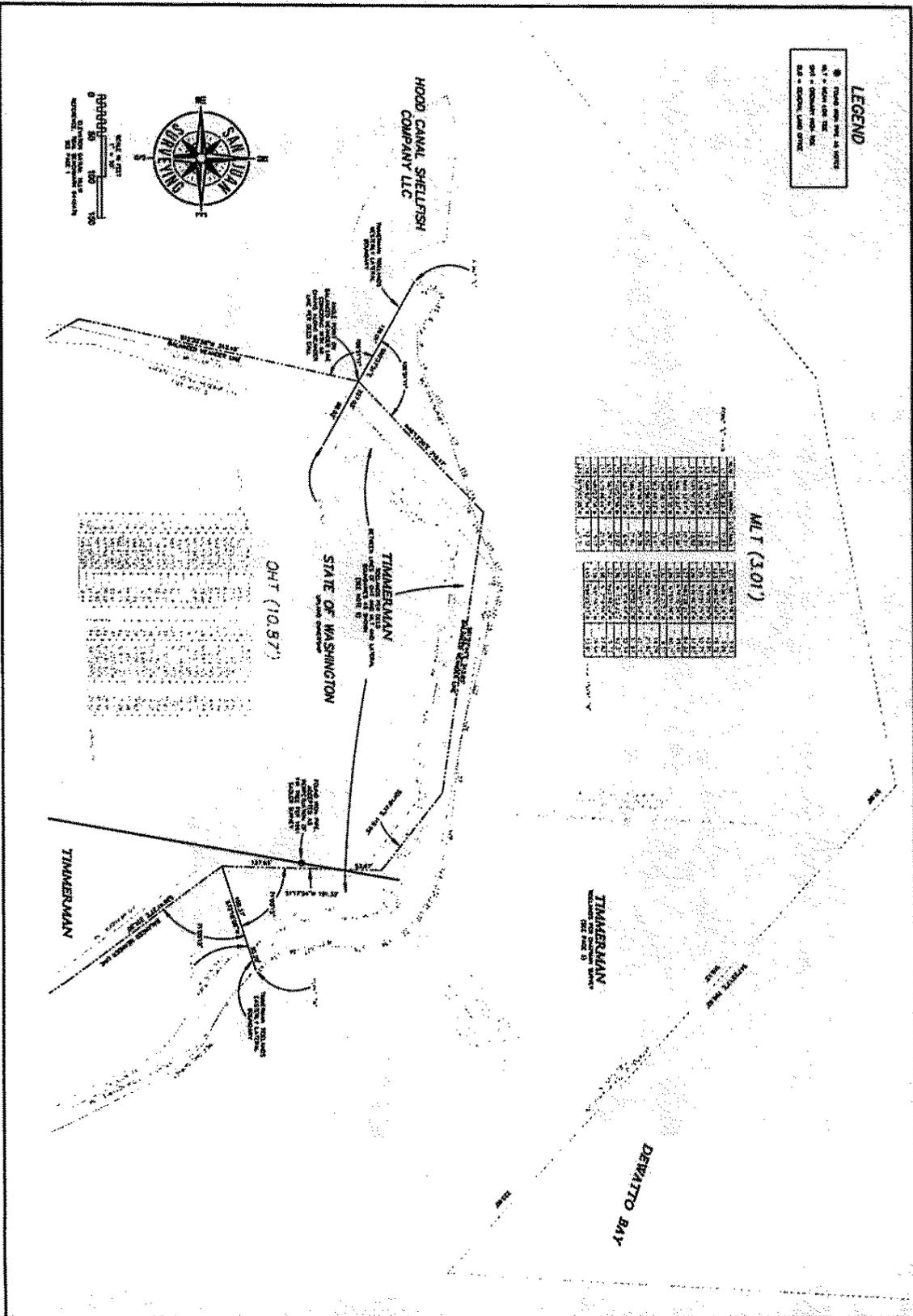
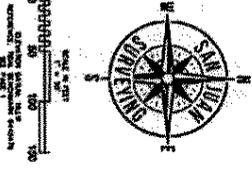
1:50,000

**LEGEND**

- Iron pins and monuments as shown on the survey map
- Monuments as shown on the survey map
- Boundaries as shown on the survey map
- Boundaries as shown on the survey map
- Boundaries as shown on the survey map

**LEGEND**

- FOUND AND NOT AS SURVEYED
- FOUND AND AS SURVEYED
- FOUND AND NOT AS SURVEYED
- FOUND AND AS SURVEYED
- FOUND AND NOT AS SURVEYED
- FOUND AND AS SURVEYED



STATION	BEARING	DISTANCE	REMARKS
1	N 10° 00' 00" E	100.00	START OF ROAD
2	N 89° 00' 00" W	100.00	END OF ROAD
3	S 89° 00' 00" E	100.00	START OF ROAD
4	S 10° 00' 00" W	100.00	END OF ROAD
5	N 10° 00' 00" E	100.00	START OF ROAD
6	N 89° 00' 00" W	100.00	END OF ROAD
7	S 89° 00' 00" E	100.00	START OF ROAD
8	S 10° 00' 00" W	100.00	END OF ROAD
9	N 10° 00' 00" E	100.00	START OF ROAD
10	N 89° 00' 00" W	100.00	END OF ROAD
11	S 89° 00' 00" E	100.00	START OF ROAD
12	S 10° 00' 00" W	100.00	END OF ROAD
13	N 10° 00' 00" E	100.00	START OF ROAD
14	N 89° 00' 00" W	100.00	END OF ROAD
15	S 89° 00' 00" E	100.00	START OF ROAD
16	S 10° 00' 00" W	100.00	END OF ROAD
17	N 10° 00' 00" E	100.00	START OF ROAD
18	N 89° 00' 00" W	100.00	END OF ROAD
19	S 89° 00' 00" E	100.00	START OF ROAD
20	S 10° 00' 00" W	100.00	END OF ROAD
21	N 10° 00' 00" E	100.00	START OF ROAD
22	N 89° 00' 00" W	100.00	END OF ROAD
23	S 89° 00' 00" E	100.00	START OF ROAD
24	S 10° 00' 00" W	100.00	END OF ROAD
25	N 10° 00' 00" E	100.00	START OF ROAD
26	N 89° 00' 00" W	100.00	END OF ROAD
27	S 89° 00' 00" E	100.00	START OF ROAD
28	S 10° 00' 00" W	100.00	END OF ROAD
29	N 10° 00' 00" E	100.00	START OF ROAD
30	N 89° 00' 00" W	100.00	END OF ROAD
31	S 89° 00' 00" E	100.00	START OF ROAD
32	S 10° 00' 00" W	100.00	END OF ROAD
33	N 10° 00' 00" E	100.00	START OF ROAD
34	N 89° 00' 00" W	100.00	END OF ROAD
35	S 89° 00' 00" E	100.00	START OF ROAD
36	S 10° 00' 00" W	100.00	END OF ROAD
37	N 10° 00' 00" E	100.00	START OF ROAD
38	N 89° 00' 00" W	100.00	END OF ROAD
39	S 89° 00' 00" E	100.00	START OF ROAD
40	S 10° 00' 00" W	100.00	END OF ROAD
41	N 10° 00' 00" E	100.00	START OF ROAD
42	N 89° 00' 00" W	100.00	END OF ROAD
43	S 89° 00' 00" E	100.00	START OF ROAD
44	S 10° 00' 00" W	100.00	END OF ROAD
45	N 10° 00' 00" E	100.00	START OF ROAD
46	N 89° 00' 00" W	100.00	END OF ROAD
47	S 89° 00' 00" E	100.00	START OF ROAD
48	S 10° 00' 00" W	100.00	END OF ROAD
49	N 10° 00' 00" E	100.00	START OF ROAD
50	N 89° 00' 00" W	100.00	END OF ROAD
51	S 89° 00' 00" E	100.00	START OF ROAD
52	S 10° 00' 00" W	100.00	END OF ROAD
53	N 10° 00' 00" E	100.00	START OF ROAD
54	N 89° 00' 00" W	100.00	END OF ROAD
55	S 89° 00' 00" E	100.00	START OF ROAD
56	S 10° 00' 00" W	100.00	END OF ROAD
57	N 10° 00' 00" E	100.00	START OF ROAD
58	N 89° 00' 00" W	100.00	END OF ROAD
59	S 89° 00' 00" E	100.00	START OF ROAD
60	S 10° 00' 00" W	100.00	END OF ROAD
61	N 10° 00' 00" E	100.00	START OF ROAD
62	N 89° 00' 00" W	100.00	END OF ROAD
63	S 89° 00' 00" E	100.00	START OF ROAD
64	S 10° 00' 00" W	100.00	END OF ROAD
65	N 10° 00' 00" E	100.00	START OF ROAD
66	N 89° 00' 00" W	100.00	END OF ROAD
67	S 89° 00' 00" E	100.00	START OF ROAD
68	S 10° 00' 00" W	100.00	END OF ROAD
69	N 10° 00' 00" E	100.00	START OF ROAD
70	N 89° 00' 00" W	100.00	END OF ROAD
71	S 89° 00' 00" E	100.00	START OF ROAD
72	S 10° 00' 00" W	100.00	END OF ROAD
73	N 10° 00' 00" E	100.00	START OF ROAD
74	N 89° 00' 00" W	100.00	END OF ROAD
75	S 89° 00' 00" E	100.00	START OF ROAD
76	S 10° 00' 00" W	100.00	END OF ROAD
77	N 10° 00' 00" E	100.00	START OF ROAD
78	N 89° 00' 00" W	100.00	END OF ROAD
79	S 89° 00' 00" E	100.00	START OF ROAD
80	S 10° 00' 00" W	100.00	END OF ROAD
81	N 10° 00' 00" E	100.00	START OF ROAD
82	N 89° 00' 00" W	100.00	END OF ROAD
83	S 89° 00' 00" E	100.00	START OF ROAD
84	S 10° 00' 00" W	100.00	END OF ROAD
85	N 10° 00' 00" E	100.00	START OF ROAD
86	N 89° 00' 00" W	100.00	END OF ROAD
87	S 89° 00' 00" E	100.00	START OF ROAD
88	S 10° 00' 00" W	100.00	END OF ROAD
89	N 10° 00' 00" E	100.00	START OF ROAD
90	N 89° 00' 00" W	100.00	END OF ROAD
91	S 89° 00' 00" E	100.00	START OF ROAD
92	S 10° 00' 00" W	100.00	END OF ROAD
93	N 10° 00' 00" E	100.00	START OF ROAD
94	N 89° 00' 00" W	100.00	END OF ROAD
95	S 89° 00' 00" E	100.00	START OF ROAD
96	S 10° 00' 00" W	100.00	END OF ROAD
97	N 10° 00' 00" E	100.00	START OF ROAD
98	N 89° 00' 00" W	100.00	END OF ROAD
99	S 89° 00' 00" E	100.00	START OF ROAD
100	S 10° 00' 00" W	100.00	END OF ROAD

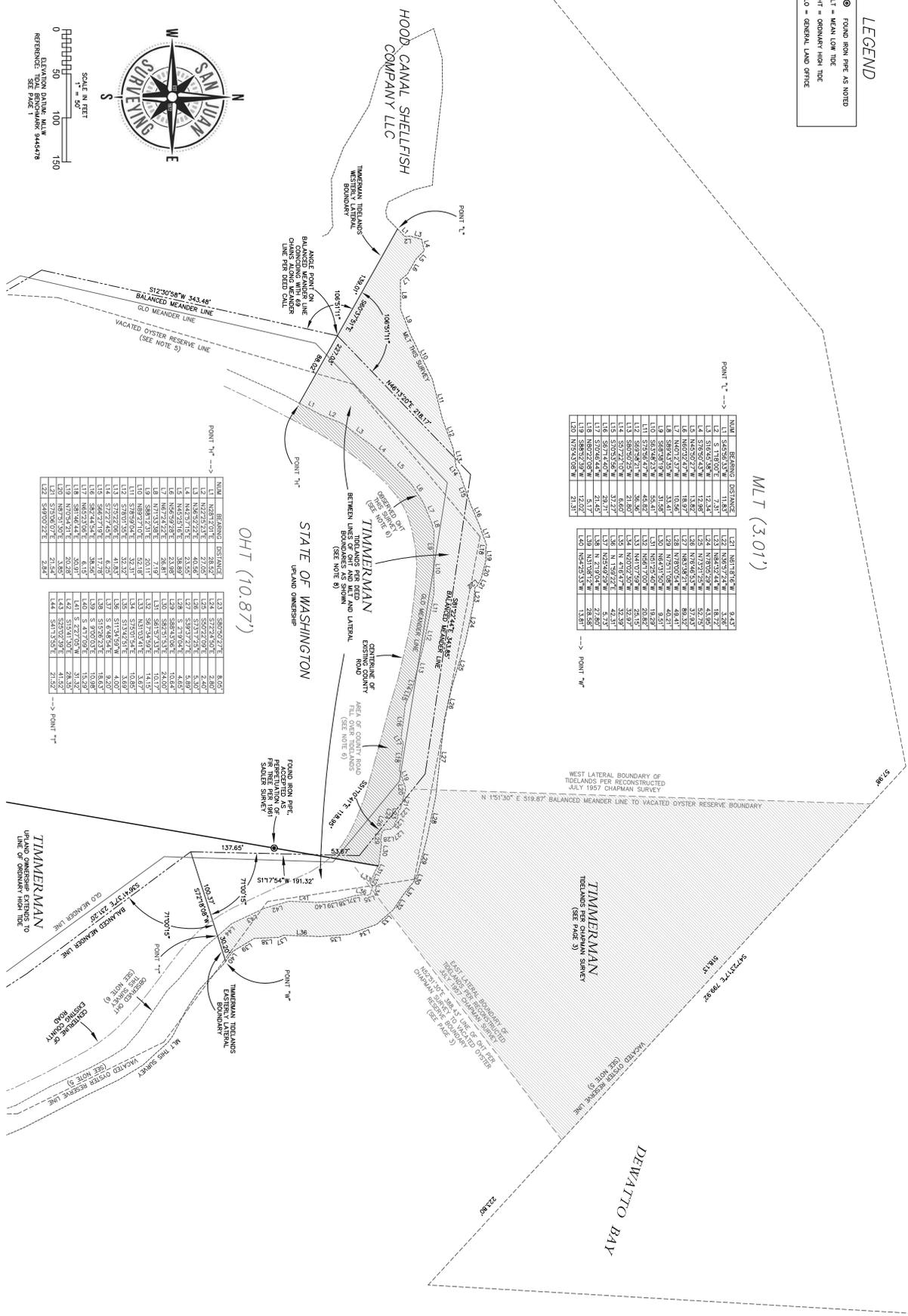
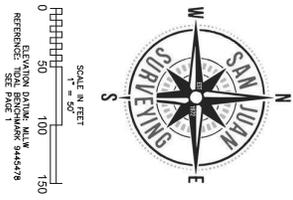
<b>PROPERTY INFORMATION</b>			<b>SAN JUAN SURVEYING</b>		<b>TOPOGRAPHIC SURVEY</b>		<b>VIRGIL G. &amp; I. D. TIMMERMAN</b>	
SEE ADDRESS	SEE PARCEL NUMBER		P.O. BOX 41 3105 LANESHORE DR # B-104 ANCHORAGE, AK 99517-2806 WWW.SANJUAN-SURVEYING.COM	QUARTER / QUARTER SW/SE CL-5	SECTION 28 23	RANGE 3 WEST	DRAWN BY DATE 12/12/18	CHECKED BY DATE 12/12/18





**LEGEND**

- ⊙ FOUND IRON PIPE AS NOTED
- M.L.T. = MEAN LOW TIDE
- O.H.T. = ORDINARY HIGH TIDE
- G.L.O. = GENERAL LAND OFFICE



POINT 14 --->

POINT	BEARING	DISTANCE
L1	N12°57'01"E	21.52
L2	S77°24'24"W	3.82
L3	N12°57'01"E	21.52
L4	N42°57'18"E	20.88
L5	N12°57'01"E	21.52
L6	N42°57'18"E	20.88
L7	N12°57'01"E	21.52
L8	N42°57'18"E	20.88
L9	N12°57'01"E	21.52
L10	N42°57'18"E	20.88
L11	N12°57'01"E	21.52
L12	N42°57'18"E	20.88
L13	N12°57'01"E	21.52
L14	N42°57'18"E	20.88
L15	N12°57'01"E	21.52
L16	N42°57'18"E	20.88
L17	N12°57'01"E	21.52
L18	N42°57'18"E	20.88
L19	N12°57'01"E	21.52
L20	N42°57'18"E	20.88
L21	N12°57'01"E	21.52
L22	N42°57'18"E	20.88

POINT 14 --->

POINT	BEARING	DISTANCE
L23	S86°52'27"E	8.05
L24	S77°24'24"W	3.82
L25	N12°57'01"E	21.52
L26	N42°57'18"E	20.88
L27	N12°57'01"E	21.52
L28	N42°57'18"E	20.88
L29	N12°57'01"E	21.52
L30	N42°57'18"E	20.88
L31	N12°57'01"E	21.52
L32	N42°57'18"E	20.88
L33	N12°57'01"E	21.52
L34	N42°57'18"E	20.88
L35	N12°57'01"E	21.52
L36	N42°57'18"E	20.88
L37	N12°57'01"E	21.52
L38	N42°57'18"E	20.88
L39	N12°57'01"E	21.52
L40	N42°57'18"E	20.88
L41	S77°24'24"W	3.82
L42	S86°52'27"E	8.05
L43	S77°24'24"W	3.82
L44	S86°52'27"E	8.05

POINT 14 --->

POINT	BEARING	DISTANCE
L45	N12°57'01"E	21.52
L46	N42°57'18"E	20.88
L47	N12°57'01"E	21.52
L48	N42°57'18"E	20.88
L49	N12°57'01"E	21.52
L50	N42°57'18"E	20.88
L51	N12°57'01"E	21.52
L52	N42°57'18"E	20.88
L53	N12°57'01"E	21.52
L54	N42°57'18"E	20.88
L55	N12°57'01"E	21.52
L56	N42°57'18"E	20.88
L57	N12°57'01"E	21.52
L58	N42°57'18"E	20.88
L59	N12°57'01"E	21.52
L60	N42°57'18"E	20.88
L61	N12°57'01"E	21.52
L62	N42°57'18"E	20.88
L63	N12°57'01"E	21.52
L64	N42°57'18"E	20.88
L65	N12°57'01"E	21.52
L66	N42°57'18"E	20.88
L67	N12°57'01"E	21.52
L68	N42°57'18"E	20.88
L69	N12°57'01"E	21.52
L70	N42°57'18"E	20.88
L71	N12°57'01"E	21.52
L72	N42°57'18"E	20.88
L73	N12°57'01"E	21.52
L74	N42°57'18"E	20.88
L75	N12°57'01"E	21.52
L76	N42°57'18"E	20.88
L77	N12°57'01"E	21.52
L78	N42°57'18"E	20.88
L79	N12°57'01"E	21.52
L80	N42°57'18"E	20.88
L81	N12°57'01"E	21.52
L82	N42°57'18"E	20.88
L83	N12°57'01"E	21.52
L84	N42°57'18"E	20.88
L85	N12°57'01"E	21.52
L86	N42°57'18"E	20.88
L87	N12°57'01"E	21.52
L88	N42°57'18"E	20.88
L89	N12°57'01"E	21.52
L90	N42°57'18"E	20.88
L91	N12°57'01"E	21.52
L92	N42°57'18"E	20.88
L93	N12°57'01"E	21.52
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L96	N42°57'18"E	20.88
L97	N12°57'01"E	21.52
L98	N42°57'18"E	20.88
L99	N12°57'01"E	21.52
L100	N42°57'18"E	20.88
L101	N12°57'01"E	21.52
L102	N42°57'18"E	20.88
L103	N12°57'01"E	21.52
L104	N42°57'18"E	20.88
L105	N12°57'01"E	21.52
L106	N42°57'18"E	20.88
L107	N12°57'01"E	21.52
L108	N42°57'18"E	20.88
L109	N12°57'01"E	21.52
L110	N42°57'18"E	20.88
L111	N12°57'01"E	21.52
L112	N42°57'18"E	20.88
L113	N12°57'01"E	21.52
L114	N42°57'18"E	20.88
L115	N12°57'01"E	21.52
L116	N42°57'18"E	20.88
L117	N12°57'01"E	21.52
L118	N42°57'18"E	20.88
L119	N12°57'01"E	21.52
L120	N42°57'18"E	20.88
L121	N12°57'01"E	21.52
L122	N42°57'18"E	20.88
L123	N12°57'01"E	21.52
L124	N42°57'18"E	20.88
L125	N12°57'01"E	21.52
L126	N42°57'18"E	20.88
L127	N12°57'01"E	21.52
L128	N42°57'18"E	20.88
L129	N12°57'01"E	21.52
L130	N42°57'18"E	20.88
L131	N12°57'01"E	21.52
L132	N42°57'18"E	20.88
L133	N12°57'01"E	21.52
L134	N42°57'18"E	20.88
L135	N12°57'01"E	21.52
L136	N42°57'18"E	20.88
L137	N12°57'01"E	21.52
L138	N42°57'18"E	20.88
L139	N12°57'01"E	21.52
L140	N42°57'18"E	20.88
L141	N12°57'01"E	21.52
L142	N42°57'18"E	20.88
L143	N12°57'01"E	21.52
L144	N42°57'18"E	20.88
L145	N12°57'01"E	21.52
L146	N42°57'18"E	20.88
L147	N12°57'01"E	21.52
L148	N42°57'18"E	20.88
L149	N12°57'01"E	21.52
L150	N42°57'18"E	20.88
L151	N12°57'01"E	21.52
L152	N42°57'18"E	20.88
L153	N12°57'01"E	21.52
L154	N42°57'18"E	20.88
L155	N12°57'01"E	21.52
L156	N42°57'18"E	20.88
L157	N12°57'01"E	21.52
L158	N42°57'18"E	20.88
L159	N12°57'01"E	21.52
L160	N42°57'18"E	20.88
L161	N12°57'01"E	21.52
L162	N42°57'18"E	20.88
L163	N12°57'01"E	21.52
L164	N42°57'18"E	20.88
L165	N12°57'01"E	21.52
L166	N42°57'18"E	20.88
L167	N12°57'01"E	21.52
L168	N42°57'18"E	20.88
L169	N12°57'01"E	21.52
L170	N42°57'18"E	20.88
L171	N12°57'01"E	21.52
L172	N42°57'18"E	20.88
L173	N12°57'01"E	21.52
L174	N42°57'18"E	20.88
L175	N12°57'01"E	21.52
L176	N42°57'18"E	20.88
L177	N12°57'01"E	21.52
L178	N42°57'18"E	20.88
L179	N12°57'01"E	21.52
L180	N42°57'18"E	20.88
L181	N12°57'01"E	21.52
L182	N42°57'18"E	20.88
L183	N12°57'01"E	21.52
L184	N42°57'18"E	20.88
L185	N12°57'01"E	21.52
L186	N42°57'18"E	20.88
L187	N12°57'01"E	21.52
L188	N42°57'18"E	20.88
L189	N12°57'01"E	21.52
L190	N42°57'18"E	20.88
L191	N12°57'01"E	21.52
L192	N42°57'18"E	20.88
L193	N12°57'01"E	21.52
L194	N42°57'18"E	20.88
L195	N12°57'01"E	21.52
L196	N42°57'18"E	20.88
L197	N12°57'01"E	21.52
L198	N42°57'18"E	20.88
L199	N12°57'01"E	21.52
L200	N42°57'18"E	20.88

**PROPERTY INFORMATION**

SITE ADDRESS: NE DEWATTO BEACH DR.	TAX PARCEL NUMBER: 323284300050
DESCRIPTION: TR 3 G.L. 5 & SW SE	MISC:



**SAN JUAN SURVEYING**  
P.O. BOX 611  
FRIDAY HARBOR, WA 98250  
360.378.6300  
WWW.SANJUANSURVEYING.COM

SECTION INDEXING DATA

QUARTER / QUARTER	SECTION	TOWNSHIP	RANGE
SW/SE	28	23 NORTH	3 WEST

TOPOGRAPHIC SURVEY FOR  
**VIRGIL TIMMERMAN**

MASON COUNTY

DRAWN BY: NSR	COMP REF: 18-121 (TOPO)	JOB NO: 18-121
CHECKED BY: JLT	DATE: 12/18/18	SHEET 2 OF 3

**VIRGIL G. & J.D. TIMMERMAN**

3105 LAKESHORE DR # B-104  
ANCHORAGE AK 995172806

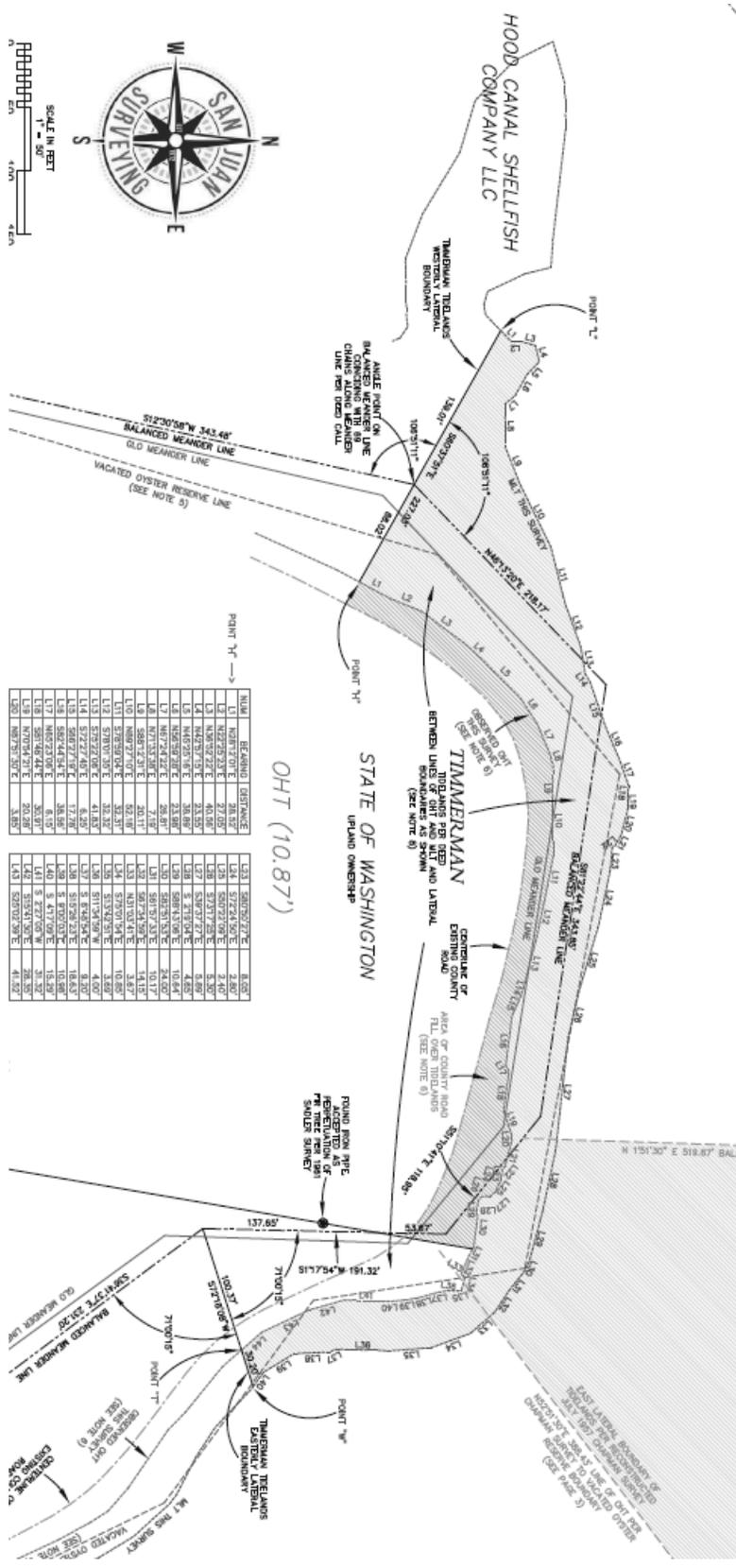
**LEGEND**

- 9 FOUND FROM PFC AS NOTED
- T = MEAN LOW TIDE
- F = ORDINARY HIGH TIDE
- 0 = ORIGINAL LAND OFFICE

MLT (3.01')

POINT	Bearing	Distance
L1	S 15° 00' 00" E	11.62'
L2	S 17° 00' 00" E	7.33'
L3	S 15° 45' 30" W	12.54'
L4	N 75° 00' 00" W	43.00'
L5	N 64° 00' 00" W	31.80'
L6	N 60° 00' 00" W	18.97'
L7	N 60° 00' 00" W	10.96'
L8	S 88° 00' 00" W	31.45'
L9	S 88° 00' 00" W	50.41'
L10	S 75° 00' 00" W	45.80'
L11	S 75° 00' 00" W	35.36'
L12	S 75° 00' 00" W	20.89'
L13	N 45° 00' 00" W	31.30'
L14	S 75° 00' 00" W	31.30'
L15	S 75° 00' 00" W	31.30'
L16	S 75° 00' 00" W	31.30'
L17	S 75° 00' 00" W	31.30'
L18	S 75° 00' 00" W	31.30'
L19	S 75° 00' 00" W	31.30'
L20	S 75° 00' 00" W	31.30'

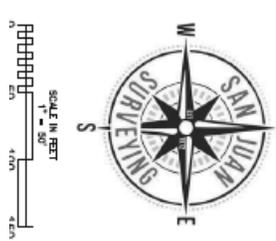
POINT	Bearing	Distance
L21	N 60° 00' 00" W	3.88'
L22	N 60° 00' 00" W	18.72'
L23	N 60° 00' 00" W	43.00'
L24	N 60° 00' 00" W	31.80'
L25	N 60° 00' 00" W	18.97'
L26	N 60° 00' 00" W	10.96'
L27	N 60° 00' 00" W	31.45'
L28	N 60° 00' 00" W	50.41'
L29	N 60° 00' 00" W	45.80'
L30	N 60° 00' 00" W	35.36'
L31	N 60° 00' 00" W	20.89'
L32	N 60° 00' 00" W	31.30'
L33	N 60° 00' 00" W	31.30'
L34	N 60° 00' 00" W	31.30'
L35	N 60° 00' 00" W	31.30'
L36	N 60° 00' 00" W	31.30'
L37	N 60° 00' 00" W	31.30'
L38	N 60° 00' 00" W	31.30'
L39	N 60° 00' 00" W	31.30'
L40	N 60° 00' 00" W	31.30'

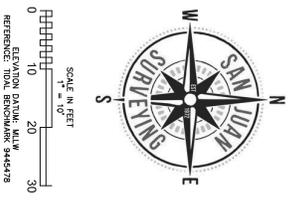
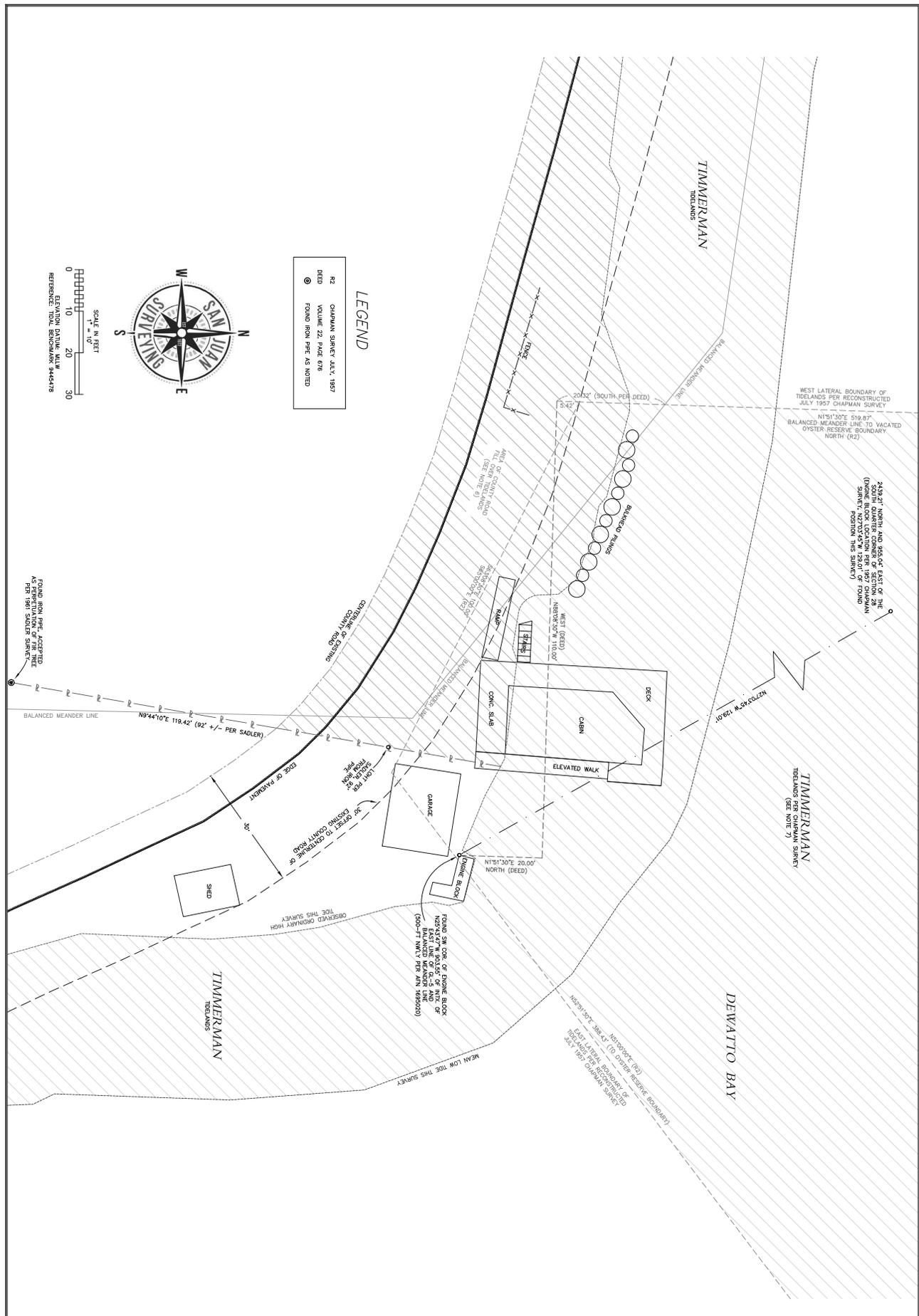


OHT (10.87')

POINT	Bearing	Distance
L41	S 15° 00' 00" E	11.62'
L42	S 17° 00' 00" E	7.33'
L43	S 15° 45' 30" W	12.54'
L44	N 75° 00' 00" W	43.00'
L45	N 64° 00' 00" W	31.80'
L46	N 60° 00' 00" W	18.97'
L47	N 60° 00' 00" W	10.96'
L48	S 88° 00' 00" W	31.45'
L49	S 88° 00' 00" W	50.41'
L50	S 75° 00' 00" W	45.80'
L51	S 75° 00' 00" W	35.36'
L52	S 75° 00' 00" W	20.89'
L53	N 45° 00' 00" W	31.30'
L54	S 75° 00' 00" W	31.30'
L55	S 75° 00' 00" W	31.30'
L56	S 75° 00' 00" W	31.30'
L57	S 75° 00' 00" W	31.30'
L58	S 75° 00' 00" W	31.30'
L59	S 75° 00' 00" W	31.30'
L60	S 75° 00' 00" W	31.30'

POINT	Bearing	Distance
L61	N 60° 00' 00" W	3.88'
L62	N 60° 00' 00" W	18.72'
L63	N 60° 00' 00" W	43.00'
L64	N 60° 00' 00" W	31.80'
L65	N 60° 00' 00" W	18.97'
L66	N 60° 00' 00" W	10.96'
L67	N 60° 00' 00" W	31.45'
L68	N 60° 00' 00" W	50.41'
L69	N 60° 00' 00" W	45.80'
L70	N 60° 00' 00" W	35.36'
L71	N 60° 00' 00" W	20.89'
L72	N 60° 00' 00" W	31.30'
L73	N 60° 00' 00" W	31.30'
L74	N 60° 00' 00" W	31.30'
L75	N 60° 00' 00" W	31.30'
L76	N 60° 00' 00" W	31.30'
L77	N 60° 00' 00" W	31.30'
L78	N 60° 00' 00" W	31.30'
L79	N 60° 00' 00" W	31.30'
L80	N 60° 00' 00" W	31.30'





**LEGEND**

R2	CHAPMAN SURVEY JULY, 1957
DEED	VOLUME 22, PAGE 678
⊙	FOUND FROM PREC. AS NOTED

**PROPERTY INFORMATION**

SITE ADDRESS: NE DEWATTO BEACH DR.	TAX PARCEL NUMBER: 323284300030
DESCRIPTION: TR 3 G.L. 5 & SW SE	MISC:



**SAN JUAN SURVEYING**  
P.O. BOX 611  
FRIDAY HARBOR, WA 98250  
361.378.8300  
WWW.SANJUANSURVEYING.COM

SECTION INDEXING DATA			
QUARTER / QUARTER	SECTION	TOWNSHIP	RANGE
SW/SE	28	23	3
GL-5		NORTH	WEST

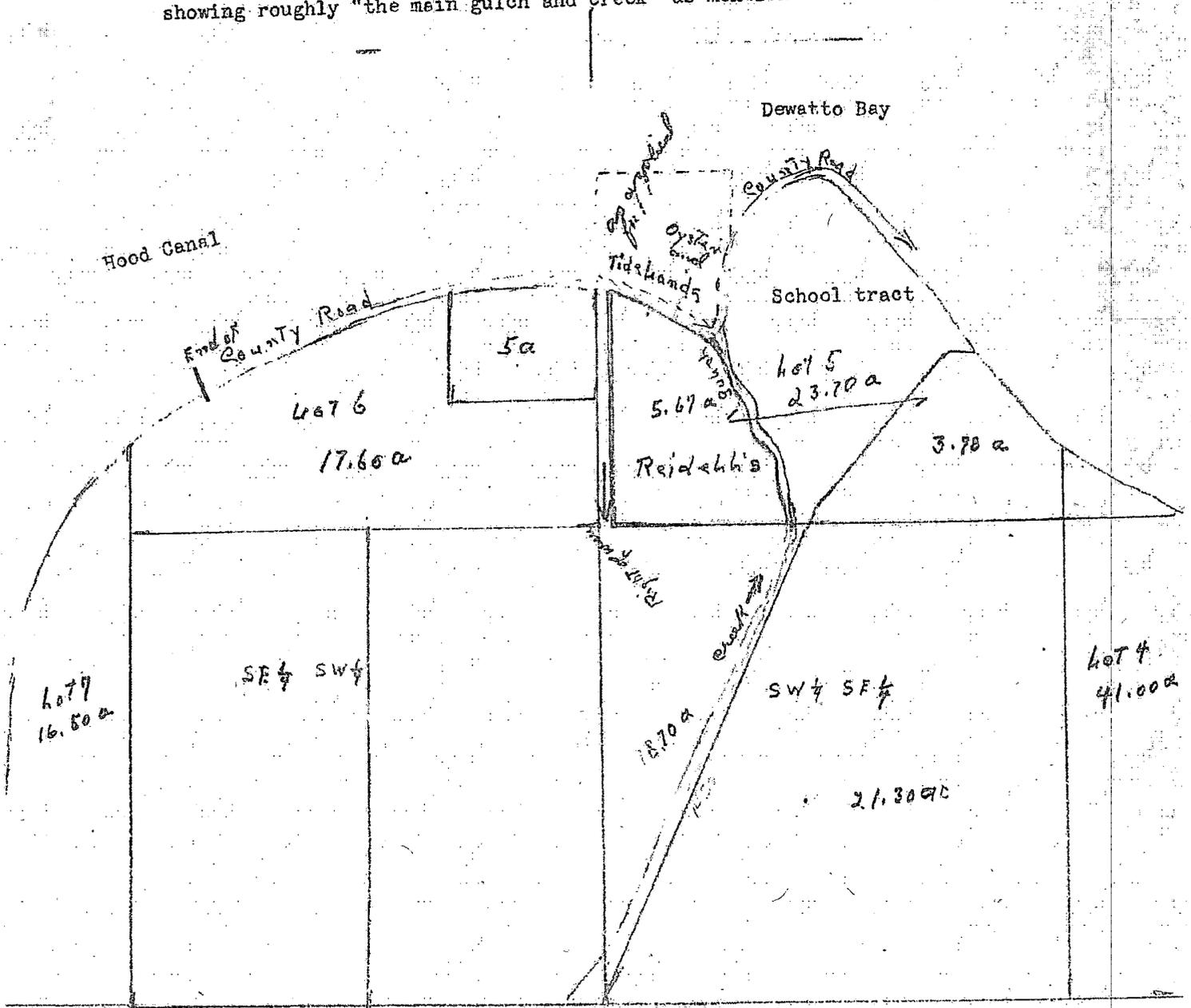
TOPOGRAPHIC SURVEY FOR  
**VIRGIL TIMMERMAN**  
MASON COUNTY

DRAWN BY: NSR	COMP. REF: 18-121 (TOPO)	JOB NO: 18-121
CHECKED BY: GLT	DATE: 12/18/18	SHEET 3 OF 3

**VIRGIL G. & J. D. TIMMERMAN**  
3105 LAKESHORE DR # B-104  
ANCHORAGE AK 995172806

# APPENDIX C

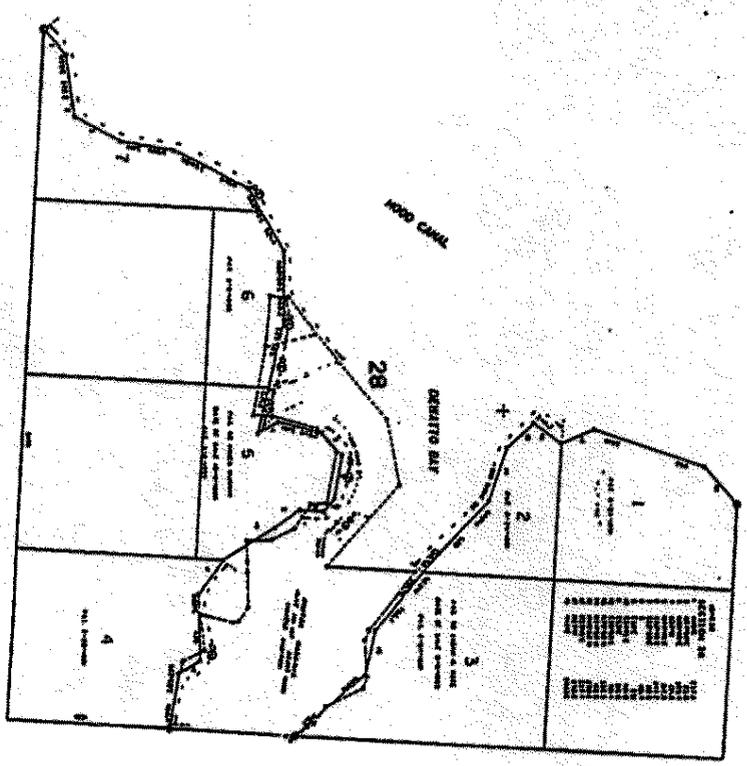
Approximate sketch of a portion of section 28-23-3, copied from map contained in abstract with "All that portion of Government Lot 5" etc. marked in red showing roughly "the main gulch and creek" as mentioned in description.



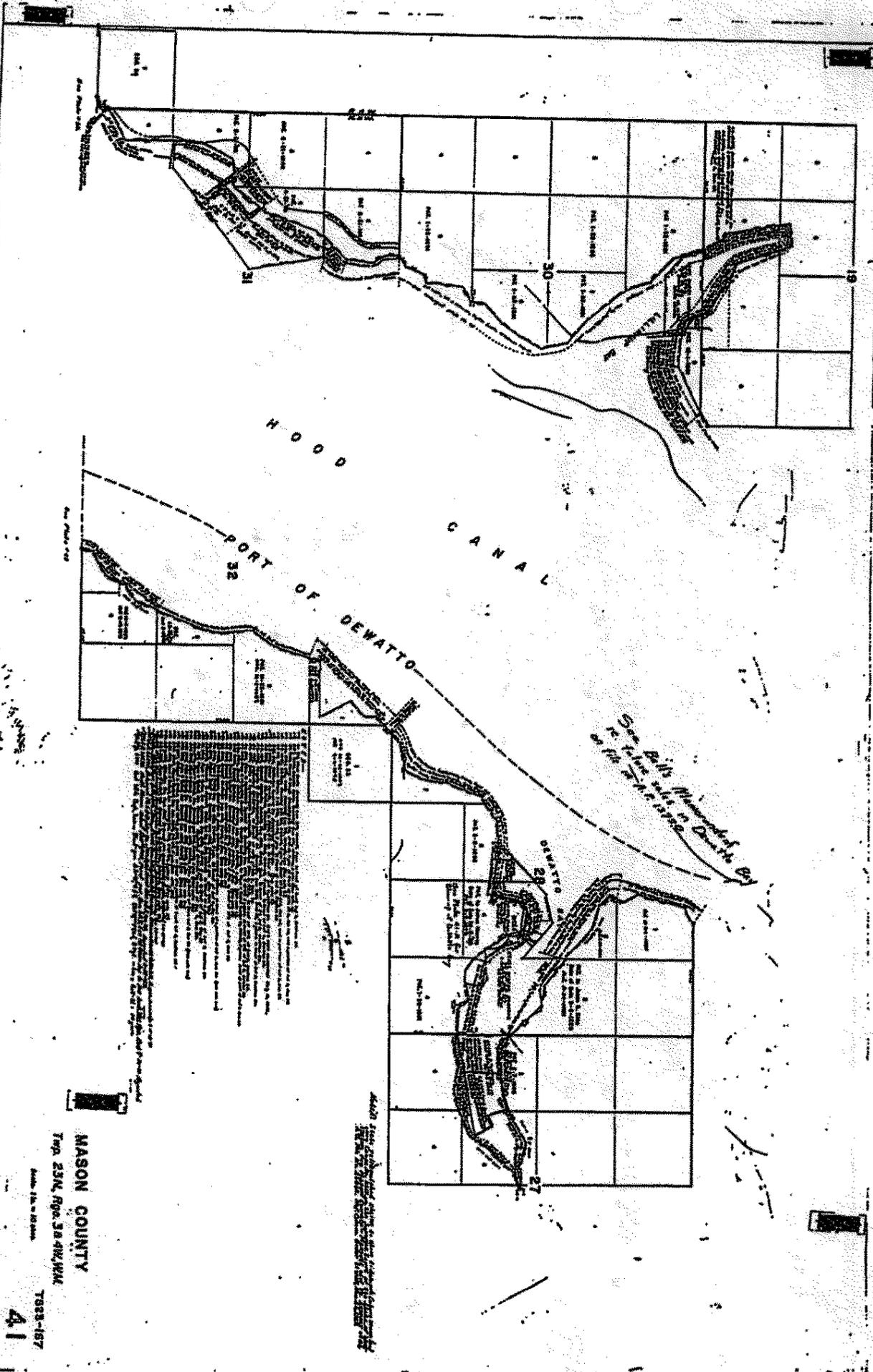
# APPENDIX D

ACTIVITY REGISTER

Section No.	State	Year	Quarter	Page	Location
28	W	1933	1	1	...
28	W	1933	2	2	...
28	W	1933	3	3	...
28	W	1933	4	4	...
28	W	1933	5	5	...
28	W	1933	6	6	...
28	W	1933	7	7	...
28	W	1933	8	8	...
28	W	1933	9	9	...
28	W	1933	10	10	...
28	W	1933	11	11	...
28	W	1933	12	12	...
28	W	1933	13	13	...
28	W	1933	14	14	...
28	W	1933	15	15	...
28	W	1933	16	16	...
28	W	1933	17	17	...
28	W	1933	18	18	...
28	W	1933	19	19	...
28	W	1933	20	20	...
28	W	1933	21	21	...
28	W	1933	22	22	...
28	W	1933	23	23	...
28	W	1933	24	24	...
28	W	1933	25	25	...
28	W	1933	26	26	...
28	W	1933	27	27	...
28	W	1933	28	28	...
28	W	1933	29	29	...
28	W	1933	30	30	...
28	W	1933	31	31	...
28	W	1933	32	32	...
28	W	1933	33	33	...
28	W	1933	34	34	...
28	W	1933	35	35	...
28	W	1933	36	36	...
28	W	1933	37	37	...
28	W	1933	38	38	...
28	W	1933	39	39	...
28	W	1933	40	40	...
28	W	1933	41	41	...
28	W	1933	42	42	...
28	W	1933	43	43	...
28	W	1933	44	44	...
28	W	1933	45	45	...
28	W	1933	46	46	...
28	W	1933	47	47	...
28	W	1933	48	48	...
28	W	1933	49	49	...
28	W	1933	50	50	...

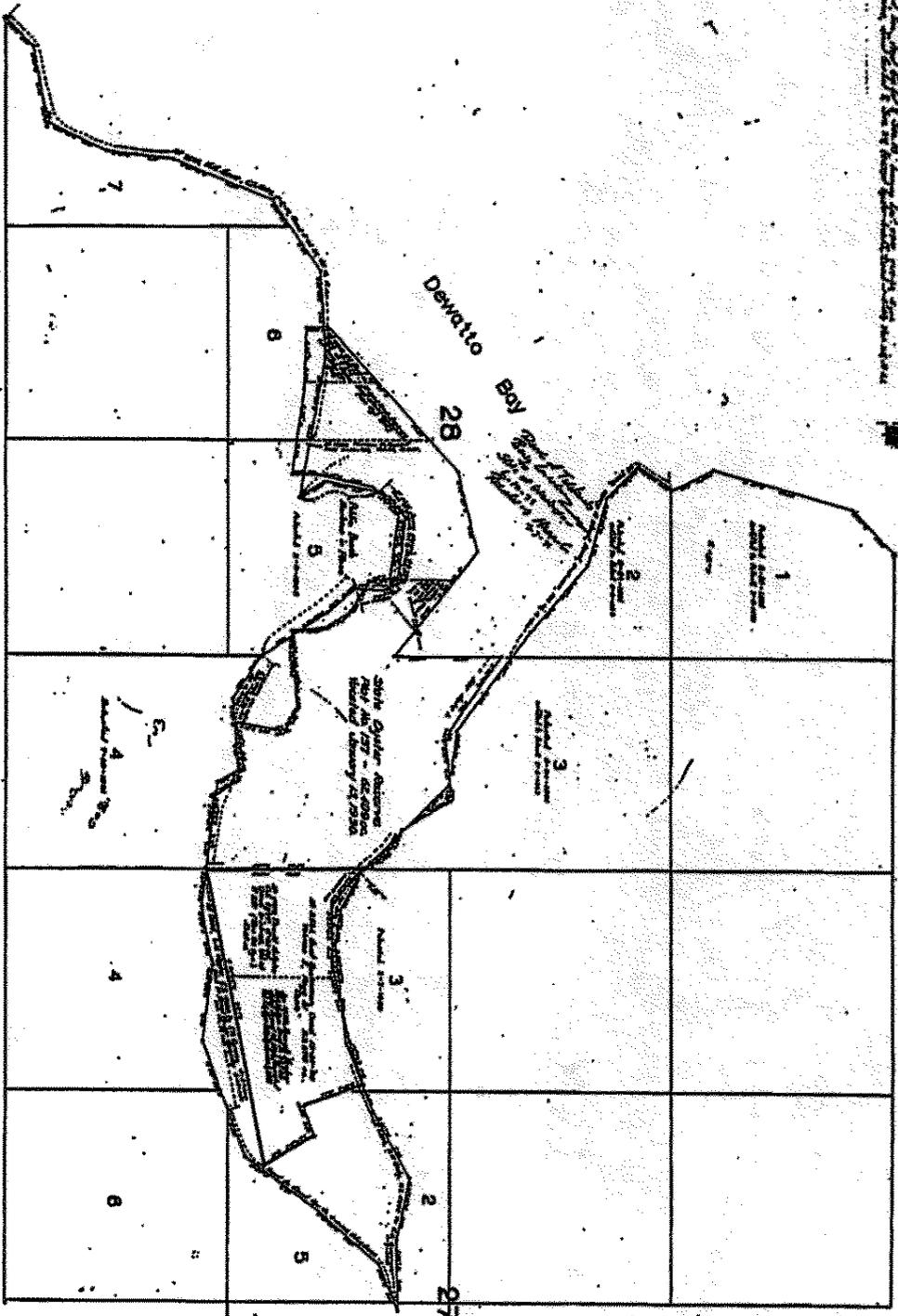


MASON COUNTY  
 28 T23N R3  
 W



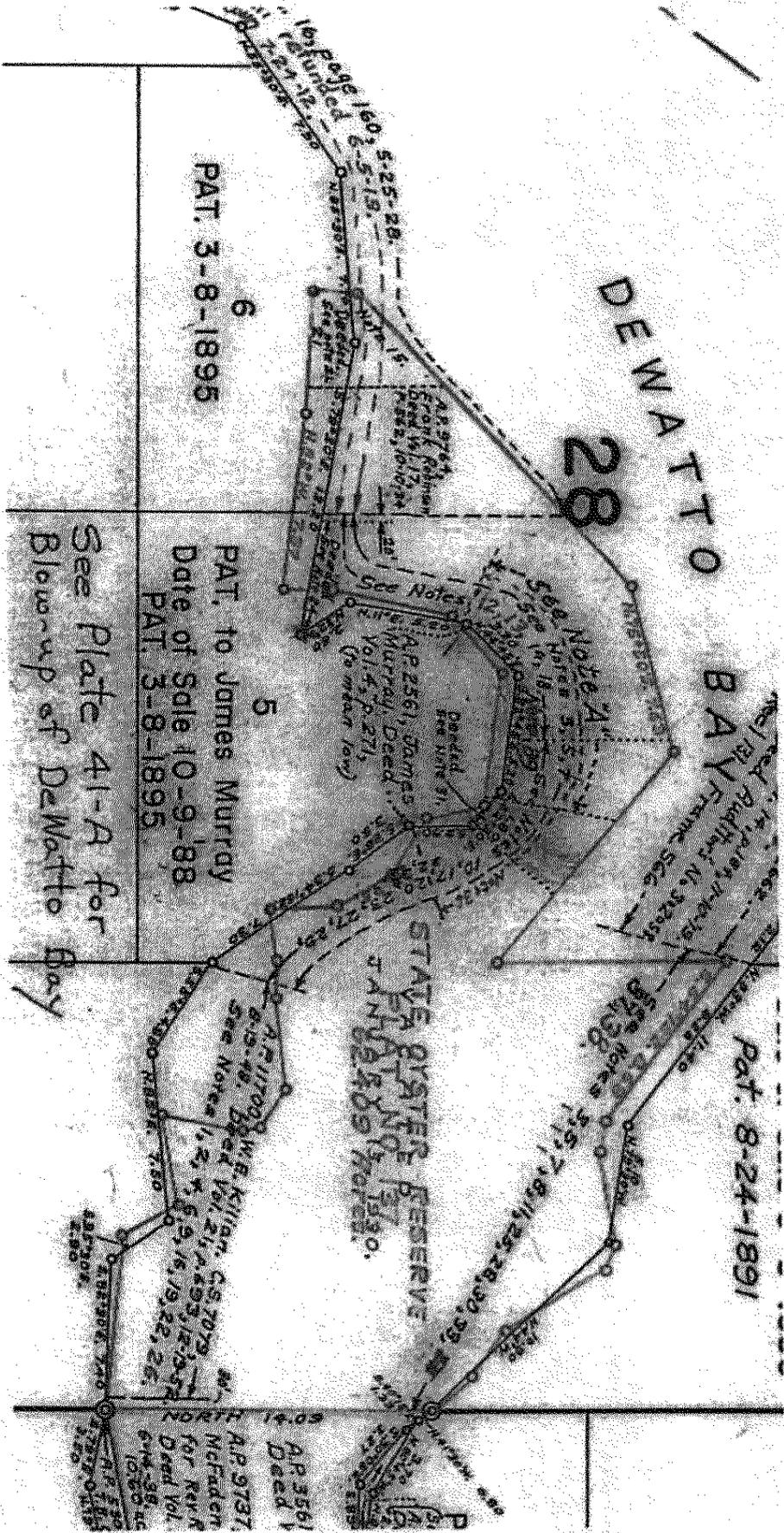
MASON COUNTY  
 Twp. 23N, Rge. 3E, 4W, 11K  
 1863-187  
 41

THE STATE OF MICHIGAN, DEPARTMENT OF NATURAL RESOURCES, DIVISION OF LAND AND WATER



Mason County  
 Township 23 North, Range 3 West, W.M. 1823-1825  
 Scale: 1 inch = 500 feet

415A





28

AP. 11330, Theresa D. Reidell  
Decd. 8-25-'47, Vol. 20, P. 340.

Patented 3-8-1895

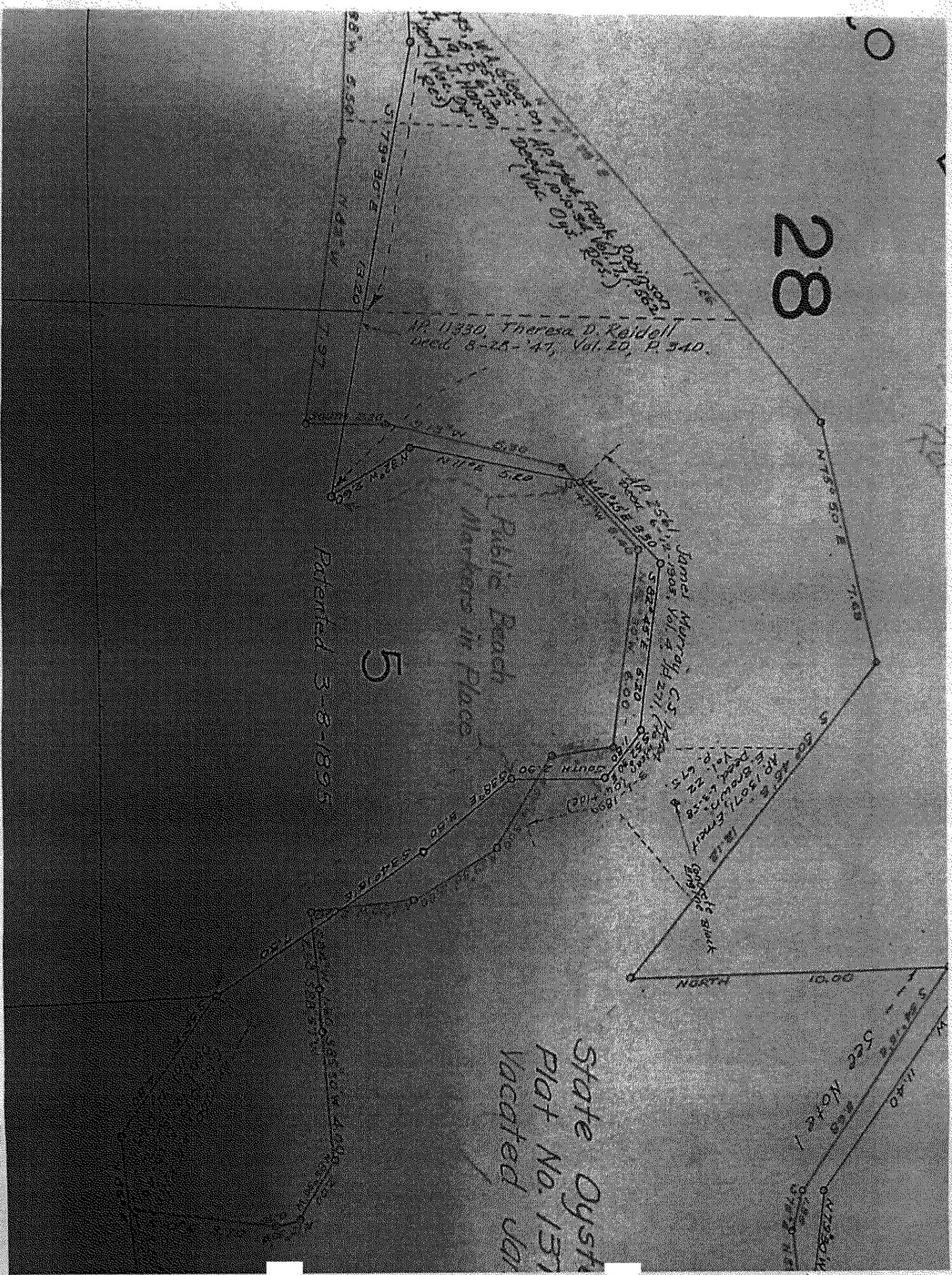
5

Public Beach  
Markers in Place

Jamel Murray, C.S. 1904, Vol. 2, P. 211, P. 212

AP. 15071, Emory  
Decd. 1-1-1958  
Vol. 15, P. 158

State Oyster  
Plat No. 137  
Vacated Jan



PAT. t  
Date c  
Pa

# DEWATTO

# 28

# BAY

Warranty Deed Vol. 14, p. 184, 11-10-19.  
Recorded on Reel 131 Frame 566  
C. of S. 2662  
N. 53° W. 11.40  
S. 54° 15' E. 9.28  
See Note 37, 38



5-28.  
13.  
85°30'E. 7.70  
Note 15.  
Deeded.  
See note 21.  
21

A.P. 9764,  
Frank Robinson  
Deed Vol. 17,  
P. 562, 10-10-34

See Note A  
See Notes 3, 5, 7  
12, 13, 14, 18.  
Note 39  
See Note 31.  
Deeded.  
See Note 31.  
A.P. 2561, James  
Murray. Deed  
Vol. 4, p. 271,  
(to mean low)

STATE OF  
VA C  
PLAT  
JANUA  
62.

6  
AT. 3-8-1895

5  
PAT. to James Murray  
Date of Sale 10-9-'88

A.P.  
8-19-4  
See N

AP. 11330, Theresa D. Reidell  
Deed 8-28-'47, Vol. 20, P. 340.

7.97

SOUTH 2.20

S 13° W

5.30

N 11° E

5.20

N 32° W 2.60

AP. 2561, 12-1903,  
Deed Vol. 4, P. 271, (to year 1899)

N 44° 15' E

3.30

S 47° W

3.40

S 82° 45' E

5.20

N 82° 30' W

6.00

Public Beach  
Markers in Place

James Murray C.S. 1444

S 52° 30' E

1.80

SOUTH 2.90

N 12° W

1.80

S 57° W

3.00

N 29° 30' E

2.80

N 4° 30' W

2.90

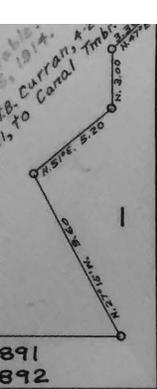
7.30

Patented 3-8-1895

5

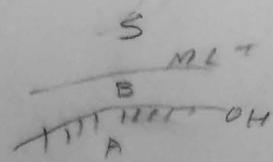
Deed Vol. 22 P. 675  
Ernest  
11 Ernest  
12.12  
Concrete Block

Concrete Block



SEC. 33

DOS 10-22-1889  
PAT 9-9-1895



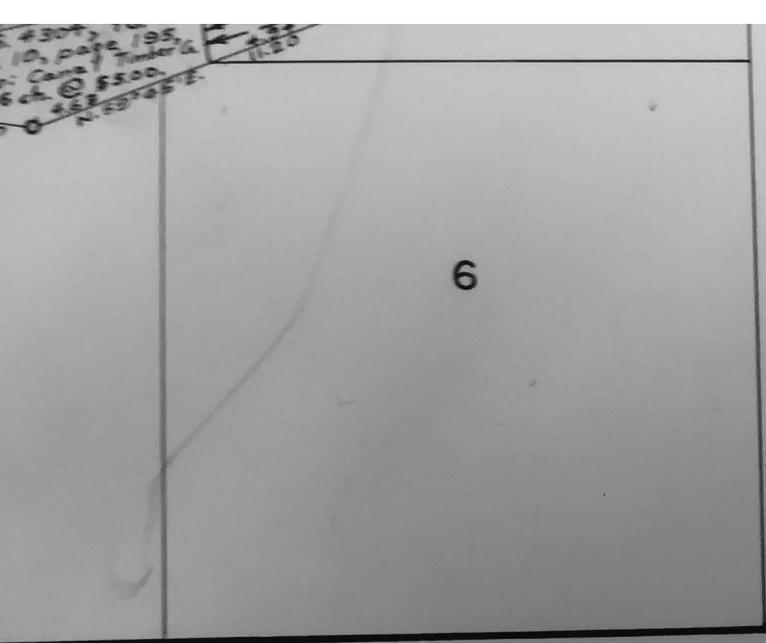
NOTES—

- ✓1. A.L. 198, Chas. Gable. Booming Lse. 558, 10-16-13, 5 yrs. In front of Gov't Lot 4, Section 28.
- ✓2. A.R.L. 11255, Charles Gable. Booming Lse. 612, 10-16-18, 5 yrs. (See note 1.)
- ✓3. A.L. 12619, Harry P. Wood. Booming Lse. 617, 10-16-19, 4 yrs. In front of Lots 3+5, Sec. 28, and a portion of Lot 3, Sec. 27.
- ✓4. A.R.L. 16527, Chas. Gable. Booming Lse. 706, 10-16-23, 1 yr. (See note 2.)
- ✓5. A.L. 16622, J.N. Ivey, Booming Lse. 708, 4-24-24, 5 yrs. In front of Lots 3+5, Sec. 28, and a portion of Lot 3, Sec. 27.
- ✓6. A.L. 910, Thomas Wilson. Lse. 872, 10-1-28, 5 yrs. In front of Lot 4, Section 28.
- ✓7. A.R.L. 994, Nettleton Lumber Co. Rejected 12-12-29. (See note 5.)
- ✓8. A.P. 9119, Ethel T. Jarvis. C. of S. 5984, 4-8-30. In front of Lot 3, Section 28. C. of S. 5984 cancelled July 16, 1932.
- ✓9. A.L. 1595, Donald McFadon. Booming Lse. 1069, 11-22-33, 5 years. In front of Lot 4, Section 28.
- ✓10. A.L. 1618, Donald McFadon. Booming Lse. 1073, 3-8-34, 5 yrs. In front of E½ Lot 5, Section 28.
- ✓11. A.L. 1772, Charles R. McCormick Lumber Co. Booming Lse. 1107, 4-18-35, 5 years. In front of Lot 3, Section 28.
- ✓12. A.L. 1707, rejected 10-29-35, In front of W½ of Lot 5, Sec. 28.
- ✓13. A.L. 1877, Chas. R. McCormick Lumber Co. Rejected Dec. 2, 1935, In front of W½ of Lot 5, Section 28.
- ✓14. A.L. 2016, Chas. R. McCormick Lumber Co. Booming Lse. 1177, 3-18-37, 5 years. In front of W½ of Lot 5, Section 28.
- ✓15. A.L. 2160, Chas. R. McCormick Lumber Co. Booming Lse. 1232, to Pope & Talbot Lumber Co, 6-15-38, 5 years. Front of part of Lot 6, Sec. 28.
- ✓16. A.R.L. 2242, Donald McFadon. Booming Lse. 1258, 11-22-38, 5 yrs. (See note 9.)
- ✓17. A.R.L. 2257, Donald McFadon. Booming Lse. 1265, 3-8-39, 5 yrs. (See note 10.)
- ✓18. A.L. 2515, Pope & Talbot Inc. Booming Lse. 1372, 3-18-42, 5 yrs. In front of W½ of Lot 5, Sec. 28.
- ✓19. A.L. 2639, Donald McFadon. Lse. 1436, 11-22-43, 2 yrs. (See note 16.)
- ✓20. A.L. 2680, Donald McFadon. Lse. 1444, 3-8-44, 2 yrs. (See note 17.)
- ✓21. A.P. 10893, W.A. Gleason. Deed Vol. 19, p. 672, 8-25-45, to: Henry J. Hansen. In front of a portion of Lot 6, Sec. 28. (VAC. OYS. RES.)
- ✓22. A.L. 2786, Pope & Talbot Inc. Lse. 1506, 3-29-46, 2 yrs. In front of Lot 4, Sec. 28.
- ✓23. A.L. 2796, Pope & Talbot Inc. Booming Lse. 1537, 3-8-46, 2 yrs. (See note 20.)
- ✓24. A.P. 11330, Theresa D. Reidell, Deed Vol. 20, p. 340, 8-28-47. In front of a portion of Lot 5, Section 28.
- ✓25. A.L. 2966, Pope & Talbot, Inc. Booming Lse. 1553, 7-17-47, 5 yrs. In front of Lot 3, Sec. 28.
- ✓26. A.L. 3117, Pope & Talbot, Inc. Booming. Rejected 11-5-48. In front of Lot 4, Sec. 28.
- ✓27. A.R.L. 3119, Pope & Talbot, Inc. Booming Lse. 1616, 3-8-48, 5 yrs. (See note 23.)
- ✓28. A.R.L. 3828, Pope & Talbot, Inc. Booming Lse. 1829, 7-17-52, 5 yrs. In front of Gov't. Lot 3, Sec. 28. (See note 25.)
- ✓29. A.R.L. 3937, Pope & Talbot, Inc. Booming Lse. 1867, 3-8-53, 5 yrs. (See note 27.)
- ✓30. A.R.L. 5668, Pope & Talbot, Inc. Booming Lse. 2080, 7-17-57, 5 yrs. (See note 28.)
- ✓31. A.P. 13071, Ernest E. Brown. Deed Vol. 22, p. 616, 6-3-58. In front of a portion of Gov't. Lot 5, Section 28.
- ✓32. A.R.L. 5924, Pope & Talbot, Inc. Lse. 5924, 3-8-58, 5 yrs. (See note 29.)
- ✓33. A.R.L. 7719, Pope & Talbot, Inc. Booming Lse. 7719, 7-17-62, 5 years. (See note 30.)
- ✓34. A.P. 18720, R.W. King, Vac. Oys. Res. In front por Gov. lot 5, Sec. 28, Rejected 12-17-69
- ✓35. A.R.L. 8133, Pope & Talbot, Inc. Rejected by C.O. 63-710, 7-26-63. (See note 32.)
- ✓36. A.P. 13773, K.W. Humphreys, Front portion Gov lot 5, Sec. 28, Rejected 3-23-67 by C.O. 67-321
- ✓37. A.R.L. 8855, Pope & Talbot, Inc., Front Gov. lot 3, Sec. 28, (Vac. oys. Res) Lse. 8856, 7-17-67, 5 yrs. cancelled 11-15-73
- ✓38. A.P. 32391, National Fish & Oyster Co. (Pun. Oys) Front Gov lot 3, Sec. 28. Rejected 3-13-69.
- ✓39. A.P. 14258 North Mason School Dist #403, Front por. Gov. lot 5, sec 28 (mean low to Ext low) Vac Oys. Res) 9-24-71. Rejected.
- ✓40. A.R.L. 9720 Rest While Park Inc. - front por. G.L. 2, 3 & 5, Sec. 31, T23N, R3W. - Lse - 6-5-71 - 10 years.

1891  
892

77.90





Note A: State relinquished claim to these tidelands (above mean low) thru Cause No. 9217 in the Superior Court of the State of Washington for Mason County - Margett et al Vs Armour et al, A.G. File No. 26862. Ref: Comm. Order 67-1011, Nov. 28, 1967.

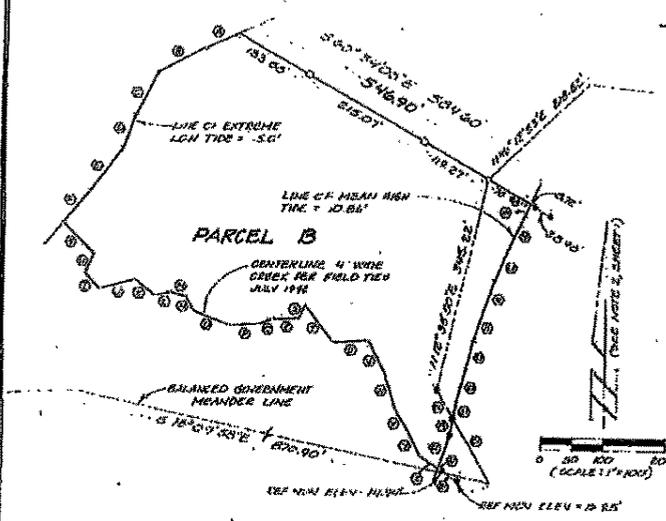
# APPENDIX E

A.F. # 552454 1/17/92

# RECORD OF SURVEY

## A PORTION OF TIDELANDS ABUTTING GOVERNMENT LOT 5 SECTION 28, TOWNSHIP 23 NORTH, RANGE 3 WEST, W.M. MASON COUNTY, WASHINGTON

FOR WASHINGTON STATE DEPT. OF FISHERIES AND DEPT. OF NATURAL RESOURCES



**BEARING & DISTANCE TABLE**

POINT	BEARING	DISTANCE
1	S 63° 18' 59" W	59.31'
2	S 61° 14' 05" W	65.01'
3	S 20° 48' 27" W	75.81'
4	S 10° 08' 38" W	86.01'
5	S 33° 17' 00" W	88.89'
6	S 45° 21' 53" W	94.75'
7	S 43° 45' 54" E	72.65'
8	S 25° 10' 03" N	55.77'
9	S 41° 14' 28" E	34.10'
10	N 71° 04' 15" E	58.94'
11	S 31° 18' 09" E	41.62'
12	N 70° 25' 31" E	86.22'
13	N 71° 25' 31" E	25.36'
14	S 21° 42' 31" E	53.35'
15	S 68° 44' 10" E	63.64'
16	N 68° 24' 11" E	44.77'
17	N 70° 17' 47" E	24.62'
18	N 60° 11' 05" E	45.04'
19	N 68° 01' 15" E	24.68'
20	S 31° 10' 01" E	75.31'
21	N 61° 11' 03" E	56.33'
22	S 21° 20' 25" E	56.85'
23	S 18° 04' 37" E	41.75'
24	S 34° 48' 41" E	48.74'
25	S 21° 00' 10" E	43.85'
26	S 32° 16' 42" E	36.31'
27	S 39° 01' 52" E	7.66'
28	S 31° 00' 17" E	23.03'
29	N 30° 01' 03" W	160.37'
30	N 30° 01' 03" W	52.00'
31	N 17° 28' 12" E	58.64'
32	N 10° 06' 05" E	26.46'
33	N 10° 06' 25" E	22.11'
34	N 14° 48' 09" E	34.87'
35	N 18° 31' 13" E	45.44'
36	N 15° 35' 24" E	62.23'
37	N 10° 16' 03" E	21.27'
38	N 22° 39' 27" E	55.43'
39	N 24° 40' 4" E	59.38'
40	N 26° 04' 24" E	14.60'

**LEGEND**

- 1 3/4" DIA ALUM ALLOY PIPE WITH "BREAKAWAY" PLASTIC BASE WITH A 3/4" DIA ALUMINUM ALLOY CAP STAMPED "WASH STATE DEPT OF FISHERIES, TIDELAND BOUNDARY PROP COR, L.S. 1804, 1972"
- 2 1/2" DIA ALUM ALLOY PIPE WITH "BREAKAWAY" PLASTIC BASE WITH A 3/4" DIA ALUMINUM ALLOY CAP STAMPED "WASH STATE DEPT OF FISHERIES, PROP MON TO TIDELAND BOUNDARY, L.S. 1804, 1972" OR ALUMINUM ROD WITH A 3/4" DIA ALUMINUM ALLOY CAP STAMPED "WASH STATE DEPT OF FISHERIES, PROP MON"
- 3 1/2" DIA ALUM PIPE WITH PLASTIC SURVEYOR'S IDENT CAP STAMPED "WINTERS, L.S. 1804"
- 4 3" CONCRETE FILLED TIE ON LATERAL TIDELAND BOUNDARY

SHEET 2 OF 3

1/22/92

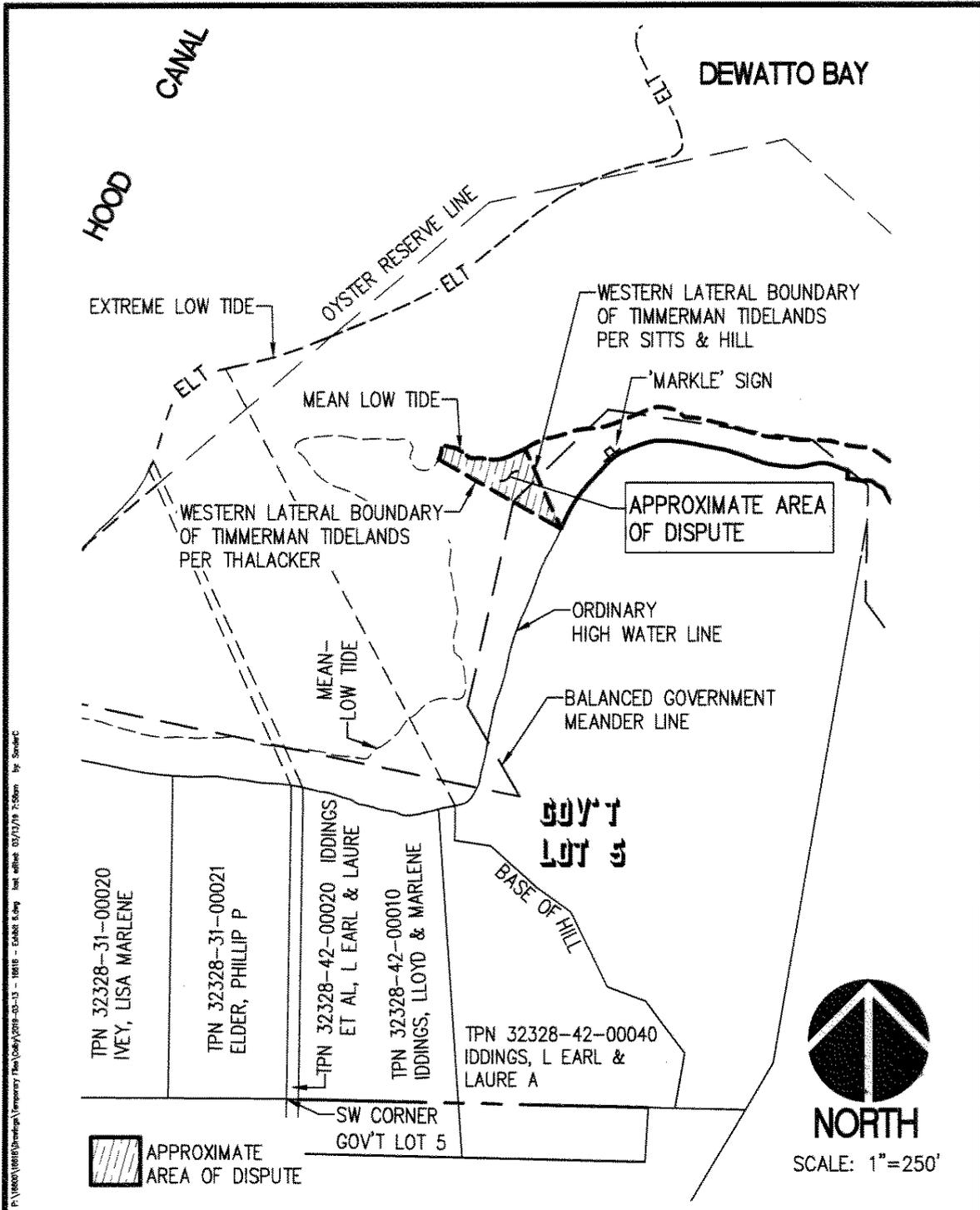
**R.F. WINTERS CO. INC.**

SURVEYING & MAPPING

410 HWY. 401 W.  
STQUIN, WA  
PH 885-3563  
PO BOX 200  
PH 885-1223

PLSO NOTR:DNR FM 836

# APPENDIX F



SHEET TITLE <b>DEWATTO BAY MASON COUNTY</b>  <b>TIDELANDS EXHIBIT 6</b>	PREPARED BY <b>SITTS &amp; HILL ENGINEERS, INC.</b> CIVIL ■ STRUCTURAL ■ SURVEYING 4815 CENTER STREET TACOMA, WA. 98409 PHONE: (253) 474-9449	SHEET <b>1 OF 1</b> PROJECT NO. <b>16618</b>
--------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------

# APPENDIX G

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR MASON COUNTY

FLORENCE ANN MARGETT, a widow )  
and DANIEL MONROE O'BRIEN, a )  
widower, )

Plaintiffs, )

vs. )

CHARLES H. ARMOUR and JANE DOE )  
ARMOUR whose true Christian name )  
is to plaintiffs unknown, hus- )  
band and wife; HENRY J. HANSEN )  
and PAULINE HANSEN, husband )  
and wife; ERNEST E. BROWN and )  
JANE DOE BROWN, whose true )  
Christian name is to plain- )  
tiffs unknown, husband and wife; )  
CECIL B. NANCE, a divorced man; )  
DEWATTO PORT DISTRICT, a munic- )  
ipal corporation; MILES K. POND )  
and OLIVE A. POND; husband and )  
wife; ROBERT W. HEMPHILL and )  
JANE DOE HEMPHILL, whose true )  
Christian name is to plaintiffs )  
unknown, husband and wife; )  
CARRIE NANCE a/k/a CLARA NANCE )  
formerly CLARA BARLOW, deceased )  
and the unknown heirs at law of )  
CLARA NANCE; STATE OF WASHING- )  
TON; MASON COUNTY; UNITED STATES )  
of AMERICA; and all other persons )  
or parties unknown claiming any )  
right, title, estate, lien or )  
interest in the real estate des- )  
cribed in the complaint herein; )

Defendants. )

NO.

RECEIVED  
AUG 2 1968  
SHERIFF, MASON COUNTY  
*B.S.*

CLAIM IN A QUIET TITLE ACTION

COME NOW the plaintiffs and for claim against the defend-  
ants, allege that:

I

Plaintiff FLORENCE ANN MARGETT is now a widow presently  
residing at Los Angeles in the State of California, and the plain-  
tiff DANIEL MONROE O'BRIEN is a widower presently residing at Palo  
Alto in the State of California.

II

The defendants ERNEST E. BROWN and JANE DOE BROWN, whose  
true Christian name is to plaintiffs unknown, husband and wife, are  
residents of Tacoma, Pierce County, Washington.

III

CECIL B. NANCE, a divorced man, is a resident of Belfair, Mason County, Washington.

IV

DEWATTO PORT DISTRICT is a municipal corporation created under and pursuant to the laws of the State of Washington with its headquarters at Dewatto in Mason County, Washington.

V

ROBERT W. HEMPHILL and JANE DOE HEMPHILL, whose true Christian name is to plaintiffs unknown, husband and wife, are residents of Tacoma, Pierce County, Washington.

VI

The plaintiffs have made diligent efforts to determine the ages, residents, and post office addresses of all of the defendants named in this action, and their unknown heirs, grantees, devisees, personal representatives, successors and assigns, and whether any of them be living or deceased, and, except for those particularly described herein with reference to residence and except for the United States of America, the State of Washington, and Mason County, the plaintiffs have been unable to locate any of said defendants either within or without the State of Washington, or to ascertain their post office addresses.

VII

The plaintiffs are the owners in fee, and are in possession, of the following described parcels of land and premises situated in Mason County, Washington to-wit:

PARCEL A. The West twenty (20) feet of Government Lot five (5), Section twentyeight (28), Township twentythree (23) North, Range three (3) West, W.M.

PARCEL B. All that portion of the Southwest quarter (SW1/4) of the Southeast quarter (SE1/4) of Section twentyeight (28), Township twentythree (23) North, Range three (3) West, W.M., which lies Westorly of the following described line:

Beginning at the quarter corner stake between Sections 28 and 33, said Township and Range, and running thence in a Northeasterly direction to a point five (5) rods East of where a certain stream of water flows farthest to the East; thence in a straight line in a more Easterly direction to a fir tree eighteen (18) inches in diameter standing near the United States Government surveyed meander line of Dewatto Bay; thence in a straight line to the meander line of Dewatto Bay, excepting therefrom, however, the following described portion thereof heretofore conveyed to Therese D. Reidell by deed dated December 11, 1934, recorded March 26, 1935, in Volume 62 of Deeds, page 476, under Auditor's File No. 74801, to-wit:

Beginning twenty (20) feet East of the Southwest corner of Government Lot 5, Section 28, Township 23 North, Range 3 West, W.M.; thence run true East 580 feet; thence true South  $3^{\circ}40'$  West 90 feet; thence true West 574 feet; thence true North 90 feet to the point of beginning.

PARCEL C. ALSO, all tidelands of the second-class, formerly owned by the State of Washington, situate in front of, adjacent to or abutting upon that portion of the United States Government meander line described as follows:

COMMENCING at the corners to fractional Sections 28 and 33, Township 23 North, Range 3 West, W.M.; thence along the meander line of the U. S. survey 69 chains to the place of beginning, it being a certain point described in the United States survey field notes as North  $44^{\circ}3/4'$  East 3.30 chains; thence South  $82^{\circ}3/4'$  East 5.20 chains; thence South  $82^{\circ}1/2'$  East 1.80 chains (Deed from State reads  $82^{\circ}1/2'$  East instead of  $82^{\circ}1/2'$  East 1.80 chains); thence South 2.90 chains; making in all 13.20 chains measured along said Government meander line, excepting therefrom, however, the following described portion thereof heretofore conveyed by William M. Nance to Ernest E. Brown and Hazel L. Willis by deed dated November 30, 1949, recorded November 30, 1949, in Volume 128 of Deeds, page 224, under Auditor's File No. 131763, to-wit:

All tidelands of the second-class situate in front of, adjacent to and abutting upon a strip of uplands 100 feet in width, measured along the meander line, and described as follows: From the Southwest corner of a large concrete engine bed built by C. N. Seaborn run due North 20 feet; thence 110 feet due West; thence South to the meander line, which is the point of beginning; thence follow said meander line Easterly 100 feet; said concrete engine base is 500 feet, more or less, Northwesterly from the intersection of the East line of Government Lot 5, Section 28, Township 23 North, Range 3 West, W.M., and the meander line, and the tidelands lie in front of said Government Lot 5, Section Township and Range aforesaid.

VIII

The plaintiffs acquired their interest in . . .

Nance, deceased, also known as Clara Nance, formerly Clara Barlow, to Mary L. O'Brien, a widow, dated August 25, 1952, recorded September 2, 1952, in Volume 147 of Deeds, page 7, under Auditor's file no. 146514. The grantee therein to-wit Mary L. O'Brien then having by Gift Deed conveyed to Eunice Ethel McLarney, Florence Ann Margett, and Daniel Monroe O'Brien, dated March 17, 1953, recorded April 6, 1953, in Volume 150 of Deeds, page 344, under Auditor's File No. 149226, the said Eunice Ethel McLarney thereupon having made a gift deed to these plaintiffs dated August 12, 1958, recorded September 22, 1958, in Volume 188 of Deeds, page 93, under Auditor's File No. 175177, wherein the said Eunice Ethel McLarney conveyed all of her right, title, and interest, to the above described real estate.

IX

In addition to the matters set forth in the prior paragraph, the plaintiffs herein claim a right, title and interest in Parcel C. by virtue of a deed date June 12, 1903, executed and delivered by the Department of Natural Resources, State of Washington, to James Murray and Jane Doe Murray, whose true Christian name is to these plaintiffs unknown. The said James Murray and wife then having conveyed their interest in said tidelands to a party by the name of Barlow and wife the said wife later becoming Mrs. Monroe Nance, and the said Mrs. Monroe Nance and her husband Monroe Nance having subsequently to William K. Nance who in turn by reason of the conveyance as set forth in the prior paragraphs has been succeeded in interest by these plaintiffs.

X

The plaintiffs together with their predecessors in title, have been in the actual, open, adverse, notorious and uninterrupted possession of said lands and premises, and the whole thereof, for more than seven (7) years immediately prior hereto, and have a connected title deducible of record either from the State of Washington or

the United States of America.

XI

The defendants, and each of them, may claim or make some claim to said lands and premises adverse to plaintiffs title, whereas in truth and in fact the defendants, and each of them, have no interest, claim, estate, lien or right in or to said lands and premises of any kind or nature, or to any part thereof.

XII

An apparent defect exists in plaintiffs record title in this, that there appears amongst the records of the Auditor of Mason County, Washington, the county wherein the real estate above described is located two separate instruments described as follows: An Option, Florence Ann Marrett and Daniel Monroe O'Brien, dated December 31, 1961, recorded May 9, 1962, on Reel 2, Frame 232, under Auditor's File No. 193179, granting to Robert W. Hemphill an option to purchase the within described real estate for the sum of \$4,000.00; "this option shall expire sixty (60) days after title is cleared to the satisfaction of the title insurance company"; said option signed by Florence Ann Marrett only, and also Option, Florence Ann Marrett and Daniel Monroe O'Brien, to Robert W. Hemphill, dated December 28, 1961, recorded May 9, 1962, on Reel 2, Frame 234, under Auditor's File No. 193180, granting to said Robert W. Hemphill an option to purchase the within described real estate for the sum of \$4,000.00; "this option shall expire sixty (60) days after title is cleared to the satisfaction of the title insurance company"; said option signed by Daniel Monroe O'Brien only. That said instruments were never signed by these plaintiffs before a Notary Public in the manner required by law for the taking of an acknowledgment and were and are entirely unsupported by consideration. That they do affect the merchant ability of the above described property.

XIII

An apparent defect exists in plaintiff's record title to the uplands described in Parcels A and B, in that Mary L. O'Brien a widow, by quit claim deed conveyed a portion of the above described property to CECIL B. HANCE, a widower by divorce, said quit claim deed having been dated August 30, 1952, recorded September 2, 1952, in Volume 147 of Deeds, page 9, under Auditor's File No. 146515. That thereafter the said Mary L. O'Brien by Gift Deed as above set forth conveyed to Eunice Ethel McLarney, Florence Ann Margatt and Daniel Monroe O'Brien the same identical property together with other property said Gift Deed having been dated March 17, 1953, recorded April 6, 1953, in Volume 150 of Deeds, page 344, under Auditor's File No. 149226. That it is believed that the up-lands conveyed to CECIL B. HANCE by the quit claim deed, described above were included by inadvertence in said quit claim, the said grantor having intended to reserve said uplands from the quit claim deed, and that the deed of CECIL B. HANCE should be reformed so that upland inadvertently described in said instrument and the subject matter of this suit be eliminated from the quit claim deed and reverted in these plaintiffs.

XIV

An apparent defect exists in plaintiff's record title to parcel C in that although an application to purchase these tidelands being number 2561 was filed December 23, 1896 by James Murray and thereafter a contract of sale was entered into between the State of Washington and the said James Murray which was followed by a deed of Lidelands dated June 12, 1903, and described as follows:

All tidelands of the second-class, owned by the State of Washington, situate in front of, adjacent to, or abutting upon that portion of the U. S. Government meander line described as follows: "Commencing at the corner to fractional sections 28 and 33, Township 23 North, Range 3 West 4th N.; thence along the meander line of the U. S. Survey 69 chains to the place of beginning, it being a certain point described in the U. S. Survey field notes as North 44 3/4° East 3.30 chains; thence South 82 3/4° East 5.20 chains; thence South 52 1/2° East 1.80 chains; thence South 2.90 chains making in all 13.20 chains measured along said Government meander line"

The State of Washington and particularly the Commissioner of Public Lands contends that pursuant to Chapter 110, Laws of 1891, the tideland appraisers of Mason County surveyed the natural oyster beds lying in front of said section 28 and prepared a plat thereof and filed the same in the office of the commissioner of Public Lands on January 24, 1895, and that there was thereupon established an oyster reserve and that the State of Washington and the Department of Public Lands was prohibited from selling or leasing the same. It is contended that by reason thereof, the contract and deed issued to James Murray from whom these plaintiffs apparently derived title was of no form, force and effect. That by reason of the passage of time and the acceptance of the benefits of said contract the State of Washington and the Department of Public Lands are estopped to deny the validity of these plaintiffs title to said tidelands fronting upon their uplands described above.

XV

Plaintiffs are informed and believe and allege the fact to be that Carrie Nance, the wife of William M. Nance, who is the plaintiffs predecessor in interest was deceased at the time that William M. Nance conveyed by Warranty Deed to Mary L. O'Brien a widow dated August 25, 1952, recorded September 2, 1952, and that her unknown heirs or persons claiming by, through, or under her other than these plaintiffs may make some claim to said lands and premises by reason of the failure of said decedant or her personal representative to join in the conveyance to Mary L. O'Brien. So far as has been ascertained by these plaintiffs, no proceedings to administer the estate of Clara Nance has ever been. That with regard to Parcel O, it is believed that the said Clara Nance was the former Clara Barlow, wife of the grantee who received a deed from James Murray and wife to the tidelands described above.

XVI

The State of Washington, one of the defendants herein, may have or claim to have a lien on all or a portion of said lands and premises by virtue of an inheritance tax due upon the estate of Clara Nance, formerly Clara Harlow, deceased, or otherwise, but in truth and in fact no such interest or lien validly exists against said lands and premises, because the exemptions allowed by law exceeded the value of the estate of Clara Nance, and if this allegation which the plaintiffs believe to be true is in fact questioned by the State of Washington, the State of Washington should be put upon strict proof as to the nature and extent of their interest or lien.

XVII

That the Department of Natural Resources or the Commissioner of Public Lands of the State of Washington should be held estopped from calling in question the title of these plaintiffs and their right to possession of the tidelands described above.

XVIII

That the United States of America, one of the defendants herein, may have or claim to have a lien on all or a portion of said lands and premises by virtue of an estate tax upon the estate of Clara Nance, but if the same in fact exists the United States Government should be put to strict proof upon the amount and the nature of their interest or lien. Mason County may have or assert some rights for delinquent taxes against said property but their claim of interest or lien is denied and the County should be put upon strict proof as to the ~~extent~~ <sup>extent</sup> or nature of its interest or lien, if any, upon said property.

WHEREFORE, plaintiffs pray for a judgment as follows:

1. That plaintiffs title to said lands and premises be

established and quieted in them in fee simple, against the claim of the defendants, or any of them;

2. That the defendants, and each of them be forever barred from having or asserting any right, title, estate, lien, or interest in or to the lands and the premises herein described adverse to plaintiffs; and

3. That the plaintiffs have such other and further relief as may be just and equitable.

GREENWOOD, SHIERS & KRUSE  
By [Signature]  
Attorneys for Plaintiffs

STATE OF WASHINGTON }  
COUNTY OF KITSAP } ss

D. M. O'BRIEN

, being first duly sworn on oath deposes and says: I am one of the plaintiffs in the above entitled action; I have read the foregoing Complaint, know the contents thereof and believe the same to be true, except those matters herein stated upon information and belief, and as to those matters I believe them also to be true.

[Signature]

SUBSCRIBED AND SWORN to before me this 23 day of July, 1966.

[Signature]  
Notary Public in and for the State of Washington, residing at BREMERTON.

# APPENDIX H

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR MASON COUNTY

NOV 17 66 AM

FLORENCE ANN MARGETT, a widow, and  
DANIEL MONROE O'BRIEN, a widower,  
Plaintiffs,

vs.

CHARLES H. ARMOUR and JANE DOE ARMOUR,  
whose true Christian name is to plain-  
tiffs unknown, husband and wife; HENRY  
J. HANSEN and PAULINE HANSEN, husband  
and wife; ERNEST E. BROWN and JANE DOE  
BROWN, whose true Christian name is to  
plaintiffs unknown, husband and wife;  
CECIL B. NANCE, a divorced man; DEWATTO  
PORT DISTRICT, a municipal corporation;  
MILES K. POND and OLIVE A. POND, husband  
and wife; ROBERT W. HEMPHILL and JANE  
DOE HEMPHILL, whose true Christian name  
is to plaintiffs unknown, husband and  
wife; CARRIE NANCE a/k/a CLARA NANCE,  
formerly CLARA BARLOW, deceased, and the  
unknown heirs at law of CLARA NANCE;  
STATE OF WASHINGTON; MASON COUNTY;  
UNITED STATES OF AMERICA; and all other  
persons or parties unknown claiming any  
right, title, estate, lien or interest  
in the real estate described in the com-  
plaint herein,

Defendants.

CLERK OF COURT

LAURA M. SWANBERG  
Clerk of the Superior Court  
Mason County, Wash.  
*L.M. Swanger*

No. 9217

A N S W E R

COMES NOW the defendant State of Washington, acting by  
and through its Department of Natural Resources, and for answer  
to plaintiffs claim in a Quiet Title Action states:

I

Paragraphs I, II, III, IV, V, VI, XIII, XVI, and XVIII  
are admitted.

22

II

As to paragraphs XII and XV the defendant is without knowledge and information sufficient to form a belief as to the truth of these assertions.

III

All other assertions and allegations are denied insofar as they tend to establish title as against the State of Washington as to what is denominated as parcel C in plaintiff's paragraph VII of the claim in a quiet title action. The deed to James Murray dated June 12, 1903, is void.

WHEREFORE the defendant State of Washington, acting by and through its Department of Natural Resources prays that the plaintiff's claim be dismissed and that the defendant have judgment quieting title to said real estate in them, and that they have judgment against the plaintiffs for their costs and disbursements herein.

  
JAMES C. HANKEN  
Assistant Attorney General

STATE OF WASHINGTON )  
County of Thurston ) ss

DON LEE FRASER, being first duly sworn, on oath deposes and says that he is the duly appointed and acting Deputy Supervisor of the Department of Natural Resources for the State of Washington and as such is authorized to make this verification on its behalf; that he read the foregoing Answer, knows the contents thereof, and believes the same to be true.

*Don Lee Fraser*

Subscribed and sworn to before me this 10th day of November, 1966.

*Mary Jane Balster*  
Notary Public in and for the State  
of Washington, residing at Olympia

# APPENDIX I

1 Copy received this 25<sup>th</sup> day of  
2 AUGUST, 1967, approved as  
to form and notice of presentment  
waived:

3 Frank A. Shiers  
4 Frank A. Shiers  
5 Of Greenwood, Shiers & Kruse  
Attorneys for Plaintiffs

6 Copy received this 15<sup>th</sup> day of  
7 August, 1967, approved as  
to form and notice of presentment  
waived:

8 James C. Hanken  
9 James C. Hanken  
10 Special Assistant Attorney General  
Attorney for Defendant, State of Washington

RECEIVED  
AND FILED

AUG 11 1967

LODGA KIMBEL  
CLERK OF THE SUPERIOR COURT  
MASON COUNTY, WASH.

J. Hemphill

12 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

13 IN AND FOR THE COUNTY OF MASON

14 FLORENCE ANN MARGETT and )  
15 DANIEL MONROE O'BRIEN, et al, )

16 Plaintiffs, )

17 vs. )

18 CHARLES H. ARMOUR and JANE )  
DOE ARMOUR, et al, )

19 Defendants. )  
20 -----

Entered on Page 217

Volume 9-11-1967  
[Signature]  
No. 9217

STIPULATION AND ORDER  
OF DISMISSAL

21 Come now Florence Ann Margett and Daniel Monroe O'Brien, plaintiffs,  
22 through their attorneys, Greenwood, Shiers & Kruse, Robert W. Hemphill  
23 and Jane Doe Hemphill, husband and wife, through their attorneys, Lee,  
24 Krilich, Lowry & Thompson, and the State of Washington through John J.  
25 O'Connell, Attorney General, James C. Hanken, Special Assistant Attorney  
26 General; and hereby stipulate that a settlement has been reached in this action  
27 on the following basis:

28 1. That a deed issued by the State of Washington to a James Murray,

LEE, KRILICH, LOWRY & THOMPSON  
ATTORNEYS AT LAW  
1815 WASHINGTON BUILDING  
TACOMA, WASHINGTON 98402  
FULTON 3-6704

Stipulation and Order - 1

1 dated June 12, 1903, conveying certain second class tidelands, which by  
2 definition gave the grantee the tidelands from the line of ordinary high tide  
3 to the line of mean low tide, is valid as between the parties thereto, said  
4 second class tidelands being legally described as follows:

5 All tidelands of the second-class, formerly owned by the  
6 State of Washington, situate in front of, adjacent to or abutting  
7 upon that portion of the United States Government meander  
8 line described as follows:

9 COMMENCING at the corners of fractional Sections 28 and 33,  
10 Township 23 North, Range 3 West, W.M.; thence along the  
11 meander line of the U. S. Survey 69 chains to the place of  
12 beginning, it being a certain point described in the United States  
13 survey field notes as North 44 3/4° East 3.30 chains; thence  
14 South 82 3/4° East 5.20 chains; thence South 82 1/2° East 1.80  
15 chains (Deed from State reads 52 1/2° East instead of 82 1/2°  
16 East 1.80 chains); thence South 2.90 chains; making in all 13.20  
17 chains measured along said Government meander line, excepting  
18 therefrom, however, the following described portion thereof  
19 heretofore conveyed by William M. Nance to Ernest E. Brown  
20 and Hazel L. Willis by deed dated November 30, 1949, recorded  
21 November 30, 1949, in Volume 128 of Deeds, page 224, under  
22 Auditor's File No. 131763, to-wit:

23 All tidelands of the second-class situate in front of, adjacent to  
24 and abutting upon a strip of uplands 100 feet in width, measured  
25 along the meander line, and described as follows: From the  
26 Southwest corner of a large concrete engine bed built by C. N.  
27 Seaborn run due North 20 feet; thence 110 feet due West; thence  
28 South to the meander line, which is the point of beginning; thence  
29 follow said meander line Easterly 100 feet; said concrete engine  
30 base is 500 feet, more or less, Northwesterly from the intersection  
31 of the East line of Government Lot 5, Section 28, Township 23  
32 North, Range 3 West, W.M., and the meander line, and the tide-  
33 lands lie in front of said Government Lot 5, Section, Township  
34 and Range aforesaid.

35 2. Defendant, Robert W. Hemphill, agrees to pay, and defendant,  
36 State of Washington, agrees to accept, the sum of \$1,000.00 in consideration  
37 of the defendant, State of Washington, dismissing any and all claims it may  
38 have to the property described in paragraph 1 hereinabove.

*File*  
39 **WITHIN THIRTY DAYS OF DATE OF THIS JUDGMENT**

40 3. Defendant, Robert W. Hemphill, agrees to pay, and plaintiffs,  
41 Florence Ann Margett and Daniel Monroe O'Brien, agree to accept, the sum  
42 of \$5,500.00 for any and all claims that the said plaintiffs may have to the

1 property described in paragraph 1 hereinabove, and the plaintiffs, Florence  
2 Ann Margett and Daniel Monroe O'Brien, agree to convey the property  
3 described in paragraph 1 hereinabove to the defendant, Robert W. Hemphill,  
4 upon payment of said sum, the cost of said conveyance to be apportioned in  
5 the usual and customary manner.

6 4. Each of the parties to this action shall pay their own attorney  
7 fees, costs and disbursements herein.

8 5. That after accomplishment of the foregoing, this action should be  
9 dismissed with prejudice.

10 Dated this 11 day of AUGUST, 1967.

11  
12   
13 Frank A. Shiers  
14 OF GREENWOOD, SHIERS & KRUSE  
15 Attorneys for Plaintiffs

16   
17 Ronald E. Thompson  
18 OF LEE, KRILICH, LOWRY & THOMPSON  
19 Attorneys for Defendants, Robert W.  
20 Hemphill and Jane Doe Hemphill

21   
22 John J. O'Connell  
23 Attorney General  
24 By James C. Hanken  
25 Special Assistant Attorney General  
26 Attorney for Defendant, State of Washington

27 ORDER

28 This matter having come on regularly for trial on the 16th day of  
June, 1967 before the above-entitled Court, the plaintiffs appearing in person  
and through their attorney, Frank A. Shiers, of Greenwood, Shiers & Kruse,  
the defendant, State of Washington, appearing through its attorney, John J.  
O'Connell, Attorney General for the State of Washington, by James C. Hanken,

Stipulation and Order - 3

1 Assistant Attorney General, the defendants, Robert W. Hemphill and Jane  
2 Doe Hemphill, husband and wife, appearing through their attorney, Ronald  
3 E. Thompson, of Lee, Krilich, Lowry & Thompson, and these parties  
4 having entered into an oral agreement for the disposition of said cause,  
5 and having entered into the stipulation set forth hereinabove, and the Court  
6 being advised that the matter has been fully settled on the conditions set forth  
7 in the said stipulation, having examined the records and files herein and being  
8 fully advised in the premises; Now, Therefore, it is hereby

9 ORDERED that a deed between the defendant, State of Washington,  
10 and a James Murray dated June 12, 1903, conveying certain second class  
11 tidelands, which by definition gave the grantee tidelands from the line of  
12 ordinary high tide to the line of mean low tide, is valid, said second class  
13 tidelands being legally described as follows:

14 All tidelands of the second-class, formerly owned by the  
15 State of Washington, situate in front of, adjacent to or abutting  
16 upon that portion of the United States Government meander  
line described as follows:

17 COMMENCING at the corners of fractional Sections 28 and 33,  
18 Township 23 North, Range 3 West, W.M.; thence along the  
19 meander line of the U. S. Survey 69 chains to the place of  
20 beginning, it being a certain point described in the United States  
21 survey field notes as North 44 3/4° East 3.30 chains; thence  
22 South 82 3/4° East 5.20 chains; thence South 82 1/2° East 1.80  
23 chains (Deed from State reads 52 1/2° East instead of 82 1/2°  
24 East 1.80 chains); thence South 2.90 chains; making in all 13.20  
25 chains measured along said Government meander line, excepting  
26 hereofore conveyed by William M. Nance to Ernest E. Brown  
27 and Hazel L. Willis by deed dated November 30, 1949, recorded  
28 November 30, 1949, in Volume 128 of Deeds, page 224, under  
Auditor's File No. 131763, to wit:

24 All tidelands of the second-class situate in front of, adjacent to  
25 and abutting upon a strip of uplands 100 feet in width, measured  
26 along the meander line, and described as follows: From the  
27 Southwest corner of a large concrete engine bed built by C. N.  
28 Seaborn run due North 20 feet; thence 140 feet due West; thence  
South to the meander line, which is the point of beginning; thence  
follow said meander line Easterly 100 feet; said concrete engine  
base is 500 feet, more or less, Northwesterly from the intersection  
of the East line of Government Lot 5, Section 28, Township 23

1 North, Range 3 West, W.M., and the meander line, and the tide-  
2 lands lie in front of said Government Lot 5, Section, Township  
and Range aforesaid.

3 it is further hereby

4 ORDERED that the defendant, Robert W. Hemphill, shall pay the  
5 sum of \$1,000.00 to the defendant, State of Washington, and upon payment  
6 of said sum, the defendant, State of Washington, shall have no further claim  
7 of right to the property described herein; it is further hereby,

8 *File* ORDERED that the defendant, Robert W. Hemphill, shall pay the  
9 sum of \$5,500.00 to the plaintiffs, Florence Ann Margett and Daniel Monroe  
10 O'Brien, and upon payment of said sum, the plaintiffs, Florence Ann Margett  
11 and Daniel Monroe O'Brien, shall convey to the defendant, Robert W. Hemphill,  
12 by a statutory warranty deed, all of their right, title and interest to the property  
13 hereinabove described, the costs of said conveyance to be apportioned in the  
14 manner which is usual and customary; it is further hereby

15 ORDERED that each of the parties appearing herein shall be responsible  
16 for their own attorney fees, costs and disbursements herein; it is finally hereby

17 ORDERED that upon accomplishment of the foregoing, this matter be  
18 and the same hereby shall be dismissed with prejudice.

19 Done in open Court this 11<sup>th</sup> day of August, 1967.

20  
21   
22 JUDGE

23 Presented by:

24   
25 Ronald E. Thompson  
26 OF DEE, KRILICH, LOWRY & THOMPSON  
Attorneys for Defendants, Robert W.  
Hemphill and Jane Doe Hemphill

27

28

Stipulation and Order - 5

# APPENDIX J

STATE OF WASHINGTON  
DEPARTMENT OF NATURAL RESOURCES  
BERT L. COLE, Commissioner of Public Lands

\*\*\*\*\*  
In re: Acceptance of Money under  
Cause No. 9217 in the Superior Court  
of the State of Washington for Mason  
County - Margett et al vs Armour et  
al - A.G. File No. 26862  
\*\*\*\*\*

O R D E R

It appearing to the Commissioner of Public Lands that under the terms of Stipulation and Order of Dismissal entered in the Superior Court of the State of Washington August 11, 1967 in Cause No. 9217 - Florence Ann Margett and Daniel Monroe O'Brien, et al, plaintiffs vs Charles H. Armour and Jane Doe Armour et al, defendants - A.G. File No. 26862 - that upon the payment of \$1,000.00 to the State of Washington, the State of Washington would have no further claim of right to property described as follows:

All tidelands of the second-class, formerly owned by the State of Washington, situate in front of, adjacent to or abutting upon that portion of the United States Government meander line described as follows:

Commencing at the corners of fractional Sections 28 and 33, Township 23 North, Range 3 West, W.M.; thence along the meander line of the U. S. Survey 69 chains to the place of beginning, it being a certain point described in the United States survey field notes as North 44 3/4° East 3.30 chains; thence South 82 3/4° East 5.20 chains; thence South 82 1/2° East 1.60 chains (Deed from State reads 52 1/2° East instead of 82 1/2° East 1.60 chains); thence South 2.90 chains, making in all 15.20 chains measured along said Government meander line, excepting therefrom, however, the following described portion thereof heretofore conveyed by William H. Nance to Ernest E. Brown and Hazel L. Willis by deed dated November 30, 1949, recorded November 30, 1949, in Volume 128 of Deeds, page 224, under Auditor's File No. 131763, to-wit:

All tidelands of the second-class situate in front of, adjacent to and abutting upon a strip of uplands 100 feet in width, measured along the meander line, and described as follows: From the southwest corner of a large concrete engine bed built by C.H. Seaborn run due North 20 feet; thence 110 feet due West; thence South to the meander line, which is the point of beginning; thence follow said meander line Easterly 100 feet; said concrete engine base is 500 feet, more or less, Northwesterly from the intersection of the East line of Government Lot 5, Section 28, Township 23 North, Range 3 West, W.M., and the meander line, and the tidelands lie in front of said Government Lot 5, Section, Township and Range aforesaid, and

That a deed dated June 12, 1903 from the State of Washington conveying the hereinbefore described second class tidelands to a James Murray, which by definition gave the grantee tidelands from the line of ordinary high

of Stipulation and Order of Dismissal entered in the Superior Court of the State of Washington August 11, 1967 in Cause No. 9217 - Florence Ann Hargett and Daniel Monroe O'Brien, et al, plaintiffs vs Charles H. Armour and Jane Doe Armour et al, defendants - A.C. File No. 26862 - that upon the payment of \$1,000.00 to the State of Washington, the State of Washington would have no further claim of right to property described as follows:

All tidelands of the second-class, formerly owned by the State of Washington, situate in front of, adjacent to or abutting upon that portion of the United States Government meander line described as follows:

Commencing at the corners of fractional Sections 28 and 33, Township 23 North, Range 3 West, W.M.; thence along the meander line of the U. S. Survey 69 chains to the place of beginning, it being a certain point described in the United States survey field notes as North  $44 \frac{3}{4}^{\circ}$  East 3.30 chains; thence South  $82 \frac{3}{4}^{\circ}$  East 5.20 chains; thence South  $82 \frac{1}{2}^{\circ}$  East 1.80 chains (Deed from State reads  $52 \frac{1}{2}^{\circ}$  East instead of  $82 \frac{1}{2}^{\circ}$  East 1.80 chains); thence South 2.90 chains, making in all 13.20 chains measured along said Government meander line, excepting therefrom, however, the following described portion thereof heretofore conveyed by William H. Nance to Ernest E. Brown and Hazel L. Willis by deed dated November 30, 1949, recorded November 30, 1949, in Volume 128 of Deeds, page 224, under Auditor's File No. L31763, to-wit:

All tidelands of the second-class situate in front of, adjacent to and abutting upon a strip of uplands 100 feet in width, measured along the meander line, and described as follows: From the Southwest corner of a large concrete engine bed built by G.H. Seaborn run due North 20 feet; thence 110 feet due West; thence South to the meander line, which is the point of beginning; thence follow said meander line Easterly 100 feet; said concrete engine base is 500 feet, more or less, Northwesterly from the intersection of the East line of Government Lot 5, Section 28, Township 23 North, Range 3 West, W.M., and the meander line, and the tidelands lie in front of said Government Lot 5, Section, Township and Range aforesaid, and

That a deed dated June 12, 1903 from the State of Washington conveying the hereinbefore described second class tidelands to a James Murray, which by definition gave the grantee tidelands from the line of ordinary high

tide to the line of mean low tide, is valid, that the sum of \$1,000.00 has been deposited in this office in accordance with terms and instructions of said Stipulation and Order of Dismissal, and the Commissioner being fully advised, it is therefore

ORDERED and DETERMINED that the sum of \$1,000.00 deposited in this office be and the same is hereby accepted as payment in full for any claim the State of Washington may have had in any of the tidelands herein described, that said sum be transferred to the State Treasurer for credit to the proper fund.

Dated this 20<sup>th</sup> day of November, A.D., 1967.

STATE OF WASHINGTON  
DEPARTMENT OF NATURAL RESOURCES

By Bert L. Cole  
BERT L. COLE  
Commissioner of Public Lands

A.G. File No. 25862  
cc: A.P. 2561  
nl

## CERTIFICATE OF SERVICE

I, James P. Grifo, declare under penalty of perjury under the laws of the State of Washington, as follows:

On the date and manner indicated below, I caused a true and correct copy of Opening Brief of Petitioner Virgil Timmerman to be served on the following individuals:

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DATED this 7<sup>th</sup> of May 2020, in Friday Harbor, Washington.

A handwritten signature in black ink, reading "JP Grifo". The signature is written in a cursive style with a large, stylized "J" and "P".

---

James P. Grifo, WSBA #45192

**THE LAW OFFICE OF JAMES P. GRIFO, LLC**

**May 07, 2020 - 12:30 PM**

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**Comments:**

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